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H.B. 191
135th General Assembly

Final Analysis

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SUMMARY

- Codifies former Criminal Rule 46.

Pretrial release generally

- Requires a court to release a defendant on the least restrictive conditions that will reasonably assure: (1) the defendant's appearance in court, (2) the protection or safety of any person or the community, and (3) that the defendant will not obstruct the criminal justice process.
- Presumes release on personal recognizance when the defendant appears pursuant to a summons issued by the court, absent good cause to the contrary.
- Requires a person who has been arrested to be brought before a judicial officer for an initial bail hearing not later than the second court day following the person's arrest.
- Requires the court to hold a second bail hearing on the second court day following the initial bail hearing if, at the initial bail hearing, the defendant was not represented by counsel, and if the defendant has not yet been released on bail.
- Requires an indigent defendant to be afforded representation by appointed counsel at the state's expense at the second bail hearing.

Conditions of release

- Requires financial conditions of release to be related to public safety, the defendant's risk of nonappearance in court, the seriousness of the offense, and the previous criminal record of the defendant.
- Requires financial conditions of release to be in an amount and type least costly to the defendant while also sufficient to reasonably assure the defendant's future appearance in court.

- Establishes types of nonfinancial conditions of release, bail, and factors for determining types, amounts, and conditions of bail.

Bail bond schedule

- Requires each court to establish a bail bond schedule covering all misdemeanors, including traffic offenses, either specifically, by type, by potential penalty, or by some other reasonable method of classification.
- Requires courts to review bail bond schedules biennially by January 31 of each even-numbered year beginning in 2024 to ensure appropriate bail bond schedules that do not result in the unnecessary detention of a defendant due to an inability to pay.

Modification of conditions

- Permits modification of conditions of release when necessary.

Statements made at bail proceeding

- Prohibits a court from receiving as substantive evidence statements or admissions of the defendant made at a bail proceeding or in the course of compliance with a condition of bail.

Failure to appear

- Provides that any person who fails to appear is subject to punishment provided by the law and the defendant's bail may be forfeited.
- Permits a court to amend the defendant's bail if the defendant breaches a condition of release.

Sureties

- Requires sureties to justify by affidavit the property that the surety proposes as security and the encumbrances on it, the number and amount of other bonds and undertakings for bail entered into by the surety and remaining undischarged, and all of the surety's other liabilities.
- Requires the surety to provide other evidence of financial responsibility as the court or clerk may require.
- Prohibits a court from approving a bail bond unless the surety or sureties appear, in the opinion of the court or clerk, to be financially responsible in at least the amount of the bond.
- Prohibits a licensed attorney from being a surety.

DETAILED ANALYSIS

The act codifies former Criminal Rule 46, which the Ohio Supreme Court repealed, effective July 1, 2023. Criminal Rule 46 governed bail-setting procedures for all Ohio state courts. On November 8, 2022, Ohio voters approved an amendment to Article I, Section 9 of the Ohio Constitution to eliminate the requirement that the amount and conditions of bail be

established pursuant to Article IV, Section 5(b) of the Ohio Constitution, and instead allow the courts to use factors such as public safety, including the seriousness of the offense, and a person's criminal record, the likelihood a person will return to court, and any other factor the General Assembly may require.¹ As a result, the Ohio Supreme Court determined that since it no longer had the authority to set bail procedures through rule, Criminal Rule 46 must be repealed. The General Assembly therefore has codified the rule through this act to maintain a uniform system for setting cash bail within state courts.

Pretrial release generally

Unless a court orders a defendant detained pursuant to a hearing denying that defendant bail, the act requires the court to release the defendant on the least restrictive conditions that, in the discretion of the court, will reasonably assure the defendant's appearance in court, the protection or safety of any person or the community, and that the defendant will not obstruct the criminal justice process.²

Absent good cause, there is a presumption of release on personal recognizance when the defendant appears pursuant to a summons issued by the court.³

A person who has been arrested, either pursuant to a warrant or without a warrant, and who has not been released on bail, must be brought before a judicial officer for an initial bail hearing not later than the second court day following the person's arrest. This bail hearing may be combined with the initial appearance provided for in the Rules of Criminal Procedure.⁴

If, at the initial bail hearing before a judicial officer, the defendant was not represented by counsel, and if the defendant has not yet been released on bail, the court must hold a second bail hearing on the second court day following the initial bail hearing. The act requires an indigent defendant to be afforded representation by appointed counsel at the state's expense at the second bail hearing.⁵

Conditions of release

If a court orders financial conditions of release, those financial conditions must be related to public safety, the defendant's risk of nonappearance in court, the seriousness of the offense, and the previous criminal record of the defendant. The act requires that any financial

¹ The General Assembly proposed this amendment on June 1, 2022, by adopting H.J.R. 2 of the 134th General Assembly.

² R.C. 2937.011(A).

³ R.C. 2937.011(F).

⁴ R.C. 2937.011(J)(1).

⁵ R.C. 2937.011(J)(2).

conditions be in an amount and type that are least costly to the defendant while also sufficient to reasonably assure the defendant's future appearance in court.⁶

Any defendant who is entitled to release may be released on one or more of the following types of bail in the amount set by the court:⁷

- An unsecured bail bond;
- A bail bond secured by the deposit of 10% of the amount of the bond in cash. The court must return 90% of the deposit upon compliance with all conditions of the bond;
- A surety bond, a bond secured by real estate or securities as allowed by law, or the deposit of cash, at the option of the defendant.

The court may also impose any of the following nonfinancial conditions of release:⁸

- The personal recognizance of the defendant;
- Placing the defendant in the custody of a designated person or organization that agrees to supervise the defendant;
- Placing restrictions on the travel, association, or place of abode of the defendant during the period of release;
- Placing the defendant under a house arrest, electronic monitoring, or work release program;
- Regulating or prohibiting the defendant's contact with the victim;
- Regulating the defendant's contact with witnesses or others associated with the case upon proof of the likelihood that the defendant will threaten, harass, cause injury, or seek to intimidate those persons;
- For any defendant charged with an offense that is alcohol or drug related, or where alcohol or drug influence or addiction appears to be a contributing factor in the offense, and who appears based upon an evaluation, prior treatment history, or recent alcohol or drug use, to be in need of treatment, requiring completion of a drug or alcohol assessment and compliance with treatment recommendations;
- Requiring compliance with alternatives to pretrial detention, including diversion programs, day reporting, or comparable alternatives, to ensure the defendant's appearance at future court proceedings;
- Any other constitutional condition considered reasonably necessary to reasonably assure the defendant's appearance or public safety.

⁶ R.C. 2937.011(A) and (B).

⁷ R.C. 2937.011(C).

⁸ R.C. 2937.011(D).

When determining the types, amounts, and conditions of bail, the act requires the court to consider all relevant information, including the following:⁹

- The nature and circumstances of the crime charged, and specifically whether the defendant used or had access to a weapon;
- The weight of the evidence against the defendant;
- The confirmation of the defendant's identity;
- The defendant's family ties, employment, financial resources, character, mental condition, length of residence in the community, jurisdiction of residence, record of convictions, record of appearance at court proceedings or of flight to avoid prosecution;
- Whether the defendant is on probation, a community control sanction, parole, post-release control, bail, or under a court protection order;
- The considerations required under Section 9 of Article I of the Ohio Constitution.

Bail bond schedule

The act requires each court to establish a bail bond schedule covering all misdemeanors, including traffic offenses, either specifically, by type, by potential penalty, or by some other reasonable method of classification, in order to expedite the prompt release of a defendant prior to an initial appearance. The court may also include requirements for release in consideration of the above listed conditions of release. The act states that the sole purpose of a bail schedule is to allow for the consideration of release prior to the defendant's initial appearance. The bond schedule established by the court is not considered relevant information in determining the types, amounts, and conditions of bail.¹⁰

Each municipal or county court must establish a method, by rule, whereby a defendant may make bail by using a credit card.¹¹

Each court must review its bail bond schedule biennially by January 31 of each even-numbered year beginning in 2024 to ensure an appropriate bail bond schedule that does not result in the unnecessary detention of a defendant due to the defendant's inability to pay.¹²

Modification of conditions

Under the act, a party or the court can move that the conditions of release require a modification. A judicial officer may order additional or different types, amounts, or conditions of bail, or may eliminate or lessen conditions of bail the court determines to be no longer necessary. Unless the parties agree to a modification, the court must hold a hearing on the

⁹ R.C. 2937.011(E).

¹⁰ R.C. 2937.011(I)(1) and (2).

¹¹ R.C. 2937.011(I)(3).

¹² R.C. 2937.011(I)(4).

modification of bond as promptly as possible. Unless modified by the judicial officer, or if application is made by a surety for discharge from a bond, conditions of release must continue until the return of a verdict or the entry of a guilty plea or a no-contest plea and may continue thereafter pending sentence or disposition of the case on review.¹³

Statements made at bail proceeding

Information stated in or offered in connection with any order entered pursuant to setting types, amounts, or conditions of bail, or conditions of release does not need to conform to the rules pertaining to the admissibility of evidence in a court of law. The court cannot receive as substantive evidence statements or admissions of the defendant made at a bail proceeding or in the course of compliance with a condition of bail.¹⁴

Failure to appear

Under the act, any person who fails to appear before any court as required is subject to the punishment provided by the law, and any bail given for the defendant's release may be forfeited. If the defendant breaches a condition of release, the court may amend the defendant's bail.¹⁵

Sureties

Every surety, except a corporate surety licensed as provided by law, must justify by affidavit, and may be required to describe in the affidavit, the property that the surety proposes as security and the encumbrances on it, the number and amount of other bonds and undertakings for bail entered into by the surety and remaining undischarged, and all of the surety's other liabilities. The surety is required to provide other evidence of financial responsibility as the court or clerk may require. A court may not approve a bail bond unless the surety or sureties appear, in the opinion of the court or clerk, to be financially responsible in at least the amount of the bond.

The act prohibits a licensed attorney from being a surety.¹⁶

Cross references

The act updates cross references in R.C. 2743.70, 2903.212, 2903.213, 2907.41, 2919.251, 2937.40, 2949.02, 2949.04, 2949.093, 2953.03, and 2953.09 from referencing Criminal Rule 46 to reference R.C. 2937.011.

¹³ R.C. 2937.011(G).

¹⁴ R.C. 2937.011(H).

¹⁵ R.C. 2937.011(K).

¹⁶ R.C. 2937.011(L).

HISTORY

Action	Date
Introduced	05-30-23
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