THE SUPREME COURT *of* OHIO

REPORT *and* RECOMMENDATIONS *of* THE SUPREME COURT *of* OHIO

Task Force *to Examine the Ohio Bail System*

JULY 2019

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REPORT & RECOMMENDATIONS OF THE
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Hon. Maureen O'Connor
Chief Justice
Supreme Court of Ohio
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Dear Chief Justice O'Connor:

Enclosed please find the final report and recommendations of the Supreme Court Task Force to Examine the Ohio Bail System. We were charged with reviewing and recommending improvements to Ohio's current bail system by:

- Studying the bail and pretrial systems used in other states; review any federal or state litigation pertaining to the use of bail and/or the elimination of cash bail;

- Determining whether courts should be required to use a pretrial risk assessment tool and, if so, whether that tool should be a validated tool;

- Reviewing the use and utility of bond schedules; and

- Reviewing Ohio's bond practices to determine the appropriate balance between recognizance bonds, pretrial monitoring, and cash or secured bonds.

I would like to thank the members of the Task Force for their hard work and careful in-depth study and review of Ohio's bail and pretrial system. I appreciate the Task Force's willingness to consider all perspectives on the issues presented and engage in constructive discussions that ultimately resulted in nine recommendations. It is our hope that the report of the Task Force fulfills the charge we were given.

On behalf of the members of the Task Force, I thank you for the opportunity to serve, participate, and offer recommendations on these important issues.

Hon. Mary Katherine Huffman

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INTRODUCTION

OVERVIEW

The American judicial system is built upon the foundational principle that those accused of a crime are "innocent until proven guilty." However, for those who are arrested and jailed prior to trial because they cannot afford to pay a monetary bond, the notion of being presumed innocent in the eyes of the law has little relevance.

Pretrial is the part of the criminal justice system that begins when a person is arrested and ends when any resulting charges are resolved – usually through a dismissal, a plea, or a trial. A critically important element of the pretrial process is deciding whether an accused person should be released until his or her court date – or detained in jail because of concerns about public safety or to ensure court appearances. "Bail" refers to the conditions a person must adhere to in order to be released pretrial. Although many people associate the term with secured money bail, it also can mean nonmonetary conditions – such as agreeing to check in regularly with a pretrial officer, or to undergo drug or alcohol testing.[1]

According to the National Center for State Courts' *2018 State of the State Courts Analysis*,[2] based on a survey of 1,000 voters conducted in November 2018, voters are primed for a discussion on cash bail. Voters acknowledge the unfairness of cash bail and are open to reform, including allowing judges more discretion in pretrial release decisions. When voters were presented with the option of allowing "judges to determine whether a defendant should be detained based on their individual case, previous offenses, and personal circumstances" as an alternative to cash bail – similar to that of the policy adopted by California earlier this year – nearly three-quarters (73%) supported this proposal and only a quarter (24%) opposed. The proposal received strong support across party and racial lines.

Voters participating in the survey found the following statements tested in this survey to be convincing reasons to support cash-bail reform:

- People who cannot afford their bail are locked up while their cases go through the courts, which can take weeks, months, or even years. While waiting for a trial, these defendants are at risk of losing their job, custody of their children, and their home, all without being convicted of a crime. (74%)

[1] Pretrial Justice Institute, *Ohio Wants a Common Sense Approach to Pretrial* (2018).

[2] National Center for State Courts, *2018 State of the State Courts – Survey Analysis* (2018).

- Sending defendants to jail who can't afford to post bail is a bad investment for taxpayers. The majority of defendants jailed while awaiting trial are lower-risk and charged with non-violent crimes. But it costs U.S. taxpayers approximately $38 million every day, or $14 billion annually, and makes it harder for the justice system to focus on keeping our communities safe from violent felons. (70%)

According to a Pretrial Justice Institute poll of Ohio voters in 2018, Ohioans think there should be fewer arrests for low-level offenses, more support services in the community, and a system focused on public safety, not on the ability to pay a monetary bond. Roughly 57 percent of inmates in Ohio jails are not there serving a sentence, but instead are awaiting trial, according to Ohio Department of Rehabilitation and Correction data. They are locked up because they cannot afford bail. Research shows that jail in Ohio is far more expensive than supervised release, with the average jail bed costing almost $65 per day, compared to $5 per day for maximum supervised release.[3]

Pretrial detention exacts a human cost in addition to a fiscal one. Studies have shown that as few as three days in jail can make those who are detained more likely to offend in the future – likely because detention disrupts stabilizing factors such as employment, housing, health, and education.[4] More than one in 10 Ohio children – over a quarter million kids – has experienced the absence of a parent due to incarceration in jail or prison.[5]

In spite of earning a "C" in a 2017 report, *The State of Pretrial Justice in America*, Ohio was named a "state to watch" because several of the state's most populous jurisdictions are taking steps to maximize pretrial release. These initiatives include diverting people away from the criminal justice system when they could be better served elsewhere, creating data information systems, and replacing money bail with pretrial assessment.[6] In Lucas County, implementation of the Laura and John Arnold Foundation Public Safety Assessment tool has resulted in an 18-percent reduction in the number of people incarcerated pretrial. Cuyahoga County conducted a data analysis of its jail populations and has been working with the Pretrial Justice Institute on recommendations regarding needed improvements to the bail system. Ohio also is participating in the Stepping Up initiative, which seeks to reduce the number of people with mental illnesses involved in the criminal justice system.[7]

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[3] The Buckeye Institute (May 2018).

[4] Christopher T. Lowenkamp, Marie VanNostrand, and Alexander Holsinger, *Hidden Costs of Pretrial Detention*, Laura and John Arnold Foundation (November 2013).

[5] The Annie E. Casey Report, *A Shared Sentence,* found that 271,000 children in Ohio have been affected by a parent's incarceration in jail or prison; the Children's Welfare League of America estimates that 2.6 million children live in Ohio.

[6] Pretrial Justice Institute, *Ohio Wants a Common Sense Approach to Pretrial* (2018).

[7] Pretrial Justice Institute, *The State of Pretrial Justice in America* (November 2017).

WORK OF THE TASK FORCE

The Task Force to Examine the Ohio Bail System endeavored to meet its charge at an aggressive pace, meeting several times in less than four months. The Task Force enlisted the assistance of the Pretrial Justice Institute (PJI), a national organization striving to make pretrial practices safer, fairer, and more effective. PJI's technical expertise, encouragement, and advice helped Task Force members learn about emerging pretrial practices in other states and participated in proposing improvements in Ohio.

In an effort to better inform their process, the Task Force invited stakeholders from across the state and beyond to a question-and-answer session. Individuals from the following organizations presented testimony: Ohio State Bail Bond Association, Ohio Professional Bail Association, American Bail Coalition, Triton Management Services, LLC, Ohio Chief Probation Officers Association, Ohio Justice and Policy Center, Bowling Green State University, Office of the Cuyahoga County Public Defender, Lucas County Criminal Justice Coordinating Council, and Lucas County Common Pleas Court. (Appendix B) Written testimony also was solicited and received from the Ohio Department of Rehabilitation and Corrections and the Montgomery County Jail Treatment Coordinator. These pretrial justice system stakeholders provided information on:

- The pros and cons of a money bail system and/or bail bond schedule;
- Data results following the elimination of money bail or a bond schedule, specifically pertaining to failure-to-appear (FTA) rates, jail population, and financial impact;
- Information regarding the use of risk assessment tools; and
- Experience using evidence-based alternatives to pretrial detention.

The Task Force also relied upon the Ohio Criminal Sentencing Commission's Ad Hoc Committee on Bail and Pretrial Services Report and Recommendations to guide the discussion. In 2017, the Ad Hoc Committee made recommendations to reform and create a system of pretrial justice that maximizes appearance, preserves public safety, protects the presumption of innocence, and achieves efficiencies and consistency in Ohio's pretrial system, while decreasing the reliance on monetary bail as the primary release mechanism.[8] The Task Force carefully reviewed each of the Ad Hoc Committee's six recommendations and the proposed changes to Criminal Rule 46 in order to develop this report and recommendations.

[8] Ohio Criminal Sentencing Commission, *Ad Hoc Committee on Bail and Pretrial Services Report and Recommendations* (2017).

The Task Force recognizes the importance of implementing an effective pretrial system that keeps the public safe, ensures that individuals accused of crimes appear in court as ordered, and, in accordance with the U.S. Constitution, respects the presumption of innocence by not unfairly interfering with the freedom of people who have not been found guilty. These recommendations serve as an important step toward ensuring an effective and just pretrial system for Ohioans involved in the legal system.

REPORT AND RECOMMENDATIONS

RECOMMENDATION 1:

Require a validated risk assessment tool be available to the judge in every municipal, county, and common pleas court when setting bond or conditions of bond.

Pretrial risk assessments are conducted to provide information about the risk of failure that a given defendant poses if released before disposition of his or her case and to provide standardized measures for informing pretrial dispositions. Typically, failure is defined as failure to appear for the scheduled court date and/or re-arrest for further criminal violations prior to adjudication.[9] Pretrial risk assessment tools are designed to inform, ***not replace***, the exercise of judicial decision-making and discretion. The results produced by pretrial risk assessment tools should be considered transparently and on the record within a range of pretrial release guidelines. Pretrial risk assessment tools provide group-based information that may support pretrial decisions, while still allowing for judicial discretion that accounts for the facts and circumstances of an individual case.[10] A pretrial risk assessment tool is merely another tool in a judge's tool box to use in making an informed decision.

- The Task Force adopts the Ohio Criminal Sentencing Commission's recommendation that, in addition to the current factors listed in Crim.R. 46(C),[11] an evaluation of a defendant's likelihood of appearance and risk to public safety, as determined by a validated risk assessment tool, should also be considered when setting bond or conditions of bond.

- The Task Force recommends a Supreme Court committee be formed to review available validated risk assessment tools and publish the list to the Supreme Court of Ohio's website. The Task Force recommends that both interview-based and non-interview based assessment tools be reviewed and published. The committee should

[9] Charles Summers, Ph.D. and Tim Willis, Ph.D., *Pretrial Risk Assessment, Research Summary*, Bureau of Justice Assistance (October 2018).

[10] Desmarais, S. & Lowder, E. M., *Pretrial risk assessment tools: A primer for judges, prosecutors, and defense attorneys* (2019).

[11] Crim.R. 46(C) lists the following factors to consider when setting bond or conditions of bail: 1) the nature and circumstances of the crime charged, and specifically whether the defendant used or had access to a weapon; 2) the weight of the evidence against the defendant; 3) the confirmation of the defendant's identity; 4) 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; and 5) whether the defendant is on probation, a community control sanction, parole, post-release control, bail, or under a court protection order.

ensure the tools it recommends are validated using Ohio data and that the tools are revalidated periodically throughout their use in order to ensure the tools are predicting new (violent) offenses and FTAs. The committee should develop a guide to assist Ohio courts in implementing and using a risk assessment tool.

- The Task Force recommends the General Assembly, in conjunction with the Supreme Court of Ohio, ensure assistance is available to courts that may lack the resources needed to implement these tools. The Task Force further recommends, as resources and infrastructure permit, the development of a statewide system that can facilitate the implementation of a risk assessment tool and provide a mechanism for data collection that could be used for validation and measuring performance. Individual courts with more robust pretrial services would have the option of using additional risk assessment tools, including interview-based tools, but they also would have the standardized data provided by the statewide system. (See Recommendation 9) The Task Force adopts the Ohio Criminal Sentencing Commission's recommendation that the General Assembly should ensure appropriate resources for any required data collection regarding bail and pretrial services.

RECOMMENDATION 2*:*

Ohio's Superintendence Rule 5, Local Rules, should be amended to require counties with more than one municipal or county court to adopt a uniform bond schedule to be used by each court in the county.

Currently, Crim.R. 46(G) allows courts 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. Bond schedules in Ohio's municipal courts vary widely across jurisdictions and even within the same county.

- Where there are multiple municipal or county courts in a county, the Task Force recommends that the Sup.R. 5 require courts to adopt a uniform bond schedule to be used by each court in the county. The bond schedule only should be used when a judicial officer is not available to make a determination.

RECOMMENDATION 3:

The Task Force recommends the Supreme Court of Ohio adopt the amendments to Crim.R. 46 as proposed by the Commission on the Rules of Practice and Procedure as reflected in Appendix A.

RECOMMENDATION 4:

Crim.R. 44 should be amended 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 an unsecured financial condition or on personal recognizance. The rule shall not impede or delay the judge's ability to release a defendant on his or her own recognizance or an unsecured financial condition.

The practice of ensuring the presence of counsel for the defendant at the initial appearance before a magistrate or judge, when the defendant learns the charge against him or her, and his or her liberty is subject to restriction, marks the initiation of adversarial judicial proceedings.[12] This triggers the attachment of the Sixth Amendment right to counsel.[13]

- Currently, Crim.R. 44(A) states: "Where a defendant charged with a ***serious offense*** is unable to obtain counsel, counsel shall be assigned to represent him at every stage of the proceedings from his initial appearance before a court through appeal as of right, unless the defendant, after being fully advised of his right to assigned counsel, knowingly, intelligently, and voluntarily waives his right to counsel." Crim.R. 44(B) states that for ***petty offenses***, counsel may be assigned. The Task Force recommends that Crim.R. 44(A) be amended to include any offense carrying the potential penalty of confinement, not just serious offenses. Crim.R. 44(B) should be eliminated.

- The General Assembly and the Ohio Public Defender should ensure adequate funding is provided for appointed counsel to be available at these hearings.

[12] *Rothergy v. Gillespie County*, 554 U.S. 191, 213 (2008).

[13] *Id.*

RECOMMENDATION 5:

Pretrial services in Ohio courts should be tailored to offer appropriate supervision and services that correspond to the level of a defendant's risk/needs. The Task Force further recommends that the release of a person not be predicated on their ability to pay for pretrial services.

Pretrial supervision offers intermediate options between release on one's own recognizance and remand to jail for those defendants facing formal prosecution. Risk-based assignment to pretrial supervision can help assure a return to court, maintain public safety, and conserve resources for supervision of high-risk caseloads. A continuum of pretrial supervision options can be housed anywhere in the justice system and should include responses appropriate for high-, medium-, and low-risk defendants.[14] Many of these supervision services can be performed by existing justice system partners, such as probation officers, and community health and behavioral health providers. Pretrial services include, but are not limited to: electronic monitoring, drug and alcohol monitoring, mental/behavioral health treatment, and court reminders.

- The Task Force recognizes the difficulty local courts may have in affording pretrial services, especially those that already are struggling with low staffing levels and scarce resources. However, providing non-detention-based pretrial services that match a defendant's risk level and needs will save taxpayers and local government significant resources now applied to pretrial incarceration. Where possible, the Task Force recommends existing justice system partners be utilized to provide these services. The Task Force recommends that the General Assembly provide adequate funding to assist courts in providing pretrial services.

RECOMMENDATION 6:

Courts should consider all alternatives to pretrial detention. The Task Force further recommends that the release of a person not be predicated on their ability to pay for pretrial services.

An effective pretrial justice system is made up of many different programs, policies, and services. The pretrial system will not look the same in every county, but all counties should strive to utilize risk-based decision making and provide appropriate supervision, diversion, and treatment options.[15]

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[14] Christopher T. Lowenkamp, Marie VanNostrand, and Alexander Holsinger, *Hidden Costs of Pretrial Detention*, Laura and John Arnold Foundation (November 2013).

[15] Kathy Rowings, County Roles and Opportunities in Pretrial Justice (May 2017).

- The Task Force adopts the Ohio Criminal Sentencing Commission's recommendations regarding alternatives to pretrial detention:
  1. Increase awareness and use of a continuum of alternatives to detention;
  2. Law enforcement should increase the use of cite-and-release for low-level, non-violent offenses;
  3. Prosecutors should screen cases before initial appearance for charging decisions, diversion suitability, and other alternative disposition options;
  4. Prosecutors and courts should increase the availability of diversion through expanded eligibility utilizing risk assessments.

RECOMMENDATION 7:

Courts should leverage technology solutions, such as text/email reminders and remote video conferencing, to implement low-cost improvements to pretrial services in Ohio courts.

When used at the pretrial stage, notification systems may help to improve court-appearance rates, thereby reducing the community and court costs associated with missed hearings. When defendants fail to appear in court, arrest warrants may be issued and served, defendants may serve more jail time, docket sizes increase, workloads increase for justice system professionals, and an additional burden may be placed on victims and witnesses. A 2013 study revealed that even simple reminders can reduce the risk of FTA and that providing substantive reminders – those that include information about possible sanctions – are even more effective.[16] Interventions that decrease FTA rates may, therefore, provide a multi-layered, budget-saving measure for courts. They also may help to improve perceptions of justice-system fairness by avoiding the need to impose potentially harmful penalties (such as jail time) on defendants who otherwise may have missed their scheduled court date unintentionally. The National Institute of Corrections cites court date notification as an effective pretrial supervision practice in "*A Framework for Pretrial Justice: Essential Elements of an Effective Pretrial System and Agency*."[17]

While obtaining information from charging documents and criminal history can be automated, collecting contact information and demographic data requires contact with the defendant in order to make informed pretrial decisions. This information could be

[16] Brian Bornstein, Alan J. Tomkins, Elizabeth M. Neeley, Mitchel N. Herian, and Joseph A. Hamm, Reducing Courts' Failure-to-Appear Rate by Written Reminders, 19 Psychology, Public Policy and Law 70 (2013).

[17] Pretrial Justice Center for Courts, *Using Court Reminder Notices to Improve Court Appearance Rates*, (September 2017).

obtained at booking or as part of the pretrial-risk-assessment process via phone or a video-enabled Internet interview if pretrial staff are not present in every jail. Receiving information directly from the defendant can reduce errors that occur in the data transfer or transcription process.[18]

- The Task Force recommends using technology solutions as part of an effective pretrial system. The Supreme Court of Ohio offers technology grants that may be directed to qualifying courts who intend to use these innovative and effective solutions.

RECOMMENDATION 8:

Education and training should be offered and encouraged for court personnel, including judges, clerks of court, prosecutors, defense counsel, and other stakeholders critical to the pretrial process. This education should include information on alternatives to pretrial detention and the use of a validated risk assessment tool.

The mounting evidence linking pretrial detention to harmful consequences for people who are held in jail demands that jurisdictions adopt new approaches. Strategies that move local justice systems away from their reliance on monetary bail and toward greater use of pretrial release already exist and, if used to the fullest extent possible, hold promise for reducing the overuse of jails. This shift may benefit not only the people who otherwise are held in pretrial detention and the communities from which they come, but also may bring substantial cost savings for local jurisdictions.[19]

Stakeholders must be trained on the importance, availability, and utility of a risk assessment tool. Training should be offered not only for those who will be administering the tool, but also for those stakeholders who will receive the results, including judges and magistrates, defense attorneys, and prosecutors. In order to see changes in Ohio's pretrial justice system, a cultural shift must take place.

- The Task Force recommends education and training for Ohio's judicial leaders and stakeholders be provided by the Ohio Judicial College on proven best practices and innovative ideas to foster continual improvement for pretrial services. Education and training could be offered as webinars, in-person training, and written materials (e.g., bench card).

[18] JTC Resources Bulletin, *Using Technology to Improve Pretrial Release Decision-Making*, (2016).

[19] Léon Digard and Elizabeth Swavola, *Justice Denied: The Harmful and Lasting Effects of Pretrial Detention*, (April 2019).

RECOMMENDATION 9:

Implement a statewide, uniform data collection system to ensure a fair, effective, and fiscally efficient pretrial process.

- As resources and infrastructure permit, the Task Force recommends creating a statewide system to collect data, including a system that would collect information used to assess the efficacy of the various validated risk assessment tools and outcomes of pretrial justice reforms. This statewide system also could be used by those without robust pretrial services to facilitate the implementation and use of a non-interview-based risk assessment tool. (See Recommendation 1) Task Force members also suggested implementing a statewide case management system that would both facilitate ongoing data collection and promote uniform reporting of data.

- The Task Force encourages the Supreme Court of Ohio to implement a statewide, uniform data collection system and encourages the General Assembly to fund the data collection.

APPENDIX A
AMENDMENTS TO CRIM.R. 46, AS PROPOSED BY THE COMMISSION ON THE RULES OF PRACTICE & PROCEDURE

RULE 46. ~~Bail~~ Pretrial Release and Detention

(A) Pretrial detention. A prosecutor may file a motion seeking pretrial detention of a defendant pursuant to the standards and procedures set forth in the Revised Code.

(B) Types and amounts of bail. Any person who is entitled to release shall be released upon one or more of the following types of bail in the amount set by the court:

(1) The personal recognizance of the accused or an unsecured bail bond;

(2) A bail bond secured by the deposit of ten percent of the amount of the bond in cash. Ninety percent of the deposit shall be returned upon compliance with all conditions of the bond;

(3) 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.

Unless the court orders the defendant detained under division (A) of this rule, the court shall release the defendant on the least restrictive conditions that, in the judgment of the court, will reasonably ensure the defendant's appearance in court, the protection of the safety of any person or the community, and that the defendant will not obstruct the criminal justice process. If the court orders monetary conditions of release, the court shall impose an amount and type which are least costly to the defendant while also sufficient to reasonably ensure the defendant's future appearance in court.

~~(B)~~(C) Conditions of bail. The court may impose any of the following conditions of bail:

(1) Place the person in the custody of a designated person or organization agreeing to supervise the person;

(2) Place restrictions on the travel, association, or place of abode of the person during the period of release;

(3) Place the person under a house arrest, electronic monitoring, or work release

program;

(4) Regulate or prohibit the person's contact with the victim;

(5) Regulate the person's contact with witnesses or others associated with the case upon proof of the likelihood that the person will threaten, harass, cause injury, or seek to intimidate those persons;

(6) Require ~~a person who is charged with an offense that is alcohol or drug related, and who appears to need treatment, to attend treatment while on bail~~ completion of a drug and/or alcohol assessment and compliance with treatment recommendations, for any person 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;

(7) Require compliance with alternatives to pretrial detention, including but not limited to
diversion programs, day reporting, or comparable alternatives, to ensure the person's appearance at future court proceedings;

(8) Any other constitutional condition considered reasonably necessary to ensure appearance or public safety.

~~(C)~~**(D) Factors.** In determining the types, amounts, and conditions of bail, the court shall consider all relevant information, including but not limited to:

(1) The nature and circumstances of the crime charged, and specifically whether the defendant used or had access to a weapon;

(2) The weight of the evidence against the defendant;

(3) The confirmation of the defendant's identity;

(4) 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;

(5) Whether the defendant is on probation, a community control sanction, parole, post- release control, bail, or under a court protection order;

(6) An evaluation of the defendant's likelihood of appearance and risk to public safety, as determined by an objective risk-assessment tool recognized as reliable by statute or by the court, when reasonably available to the court. As soon as possible without causing unreasonable delay

to the court's bail determination, this risk-assessment tool shall be employed by the court on its
own initiative for any defendant not yet released on bail, either before or after the defendant's initial appearance.

~~(D)~~**(E) Appearance pursuant to summons.** When summons has been issued and the defendant has appeared pursuant to the summons, absent good cause, a recognizance bond shall be the preferred type of bail.

~~(E)~~**(F)** ~~**Amendments**~~ **Continuation of Bail.** ~~A court, at any time, may order additional or different types, amounts, or conditions of bail.~~ Unless otherwise ordered by the court pursuant to this subsection, bail shall continue until the return of a verdict or the entry of a guilty plea, and may continue thereafter pending sentence or disposition of the case on review. At any time, a court may eliminate or lessen any condition of bail that the court believes is no longer necessary to
reasonably ensure the defendant's appearance in court, the protection of the safety of any person or the community, and that the defendant will not obstruct the criminal justice process.

~~(F)~~**(G) Information need not be admissible.** Information stated in or offered in connection with any order entered pursuant to this rule need not conform to the rules pertaining to the admissibility of evidence in a court of law. Statements or admissions of the defendant made at a bail proceeding or in the course of compliance with a condition of bail shall not be received as substantive evidence in the trial of the case.

~~(G)~~**(H) Bond schedule.**

(1) In order to expedite the prompt release of a defendant prior to initial appearance, ~~Each~~ each court shall 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. The court also may include requirements for release in consideration of divisions
~~(B)~~ (C) and ~~(C)(5)~~ (D)(5) of this rule. The sole purpose of a bail schedule is to allow for the consideration of release prior to the defendant's initial appearance.

(2) A bond schedule shall not be considered as "relevant information" under division (D) of this rule.

(3) When a person fails to post a bond established by a bail bond schedule, a judicial officer shall conduct a bail hearing no later than the second court day after that person has been arrested.

(4) Each municipal or county court shall, by rule, establish a method whereby a person may make bail by use of a credit card. No credit card transaction shall be permitted when a service charge is made against the court or clerk unless allowed by law.

(5) Each court shall review its bail bond schedule bi-annually by January 31 of each even numbered year, to ensure an appropriate bail bond schedule that does not result in the unnecessary detention of defendants due to inability to pay.

~~(H) **Continuation of bonds.** Unless otherwise ordered by the court pursuant to division (E) of this rule, or if application is made by the surety for discharge, the same bond shall continue until the return of a verdict or the acceptance of a guilty plea. In the discretion of the court, the same bond may also continue pending sentence or disposition of the case on review. Any provision of a bond or similar instrument that is contrary to this rule is void.~~

~~(I)~~ **Failure to appear; breach of conditions.** 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 person's release may be forfeited. If there is a breach of condition of bail, the court may amend the bail.

~~(J)~~ **Justification of sureties.** Every surety, except a corporate surety licensed as provided by law, shall 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 shall provide other evidence of financial responsibility as the court or clerk may require. No bail bond shall be approved 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. No licensed attorney at law shall be a surety.

APPENDIX B

TASK FORCE TO EXAMINE THE OHIO BAIL SYSTEM PRESENTERS

February 27, 2019

MICHELLE BUTTS has been an employee of the Lucas County Court of Common Pleas since 1995. She currently serves as the acting director of Lucas County Regional Court Services. Michelle has been involved in numerous special projects throughout her career, including a focus on pretrial justice reform in Lucas County through implementation of a risk-based pretrial assessment tool and implementation of evidence-based practices in pretrial bond supervision. She has presented on these topics at the local, state, and national levels. She is an active member of the criminal justice community in Lucas County and oversees one of the strategies for the MacArthur Foundation's Safety + Justice Challenge, which utilizes an intensive pretrial supervision unit and Electronic Monitoring to safely reduce the local jail population. She is an At Large Director as a member of the Ohio Association of Pretrial Services Agencies (OAPSA).

JEFF CLAYTON joined the American Bail Coalition as policy director in May 2015. He has worked in various capacities as a public policy and government relations professional for 15 years, and also as licensed attorney for the past 12 years, working most recently as the General Counsel for the Professional Bail Agents of Colorado, in addition to serving other clients in legal, legislative, and policy matters. Jeff also spent six years in government service, representing the Colorado State Courts and Probation Department, the Colorado Department of Labor and Employment, and the United States Secretary of Transportation.

STEPHEN DEMUTH is an associate professor in the Department of Sociology at Bowling Green State University. He earned a BS in sociology and psychology from Virginia Tech in 1995. He received his PhD in sociology from Penn State in 2000 and joined the Bowling Green faculty the same year. Stephen's research examines how race/ethnicity and social class affect the likelihood of becoming involved with the criminal justice system and shape treatment within the system. He teaches courses on crime and punishment and quantitative research methods at the undergraduate and graduate levels. As part of his service, Stephen has been an expert witness in several cases providing testimony about how bail systems operate and the efficacy of secured money bail.

MARC EBEL is the director of legislative affairs for Triton Management Services, where he directs Triton's legislative advocacy efforts in multiple states throughout the country. Prior to joining Triton, he worked in civil litigation in the San Diego, California area. Marc holds a Juris Doctorate from California Western School of Law in San Diego, and a Bachelor of Arts in political science from Eastern Washington University, in Cheney, Wash.

SCOTT FULTON is the director of adult court services for the Licking County Common Pleas Court. He has been employed with the Licking County Common Pleas Court since July 2014. Scott was employed at the Licking County Municipal Court Adult Probation Department for 18 years where he held the positions of director and ISP officer. Scott assisted in creating the Drug Court and OVI Court at the Licking County Municipal Court and the Drug Court and Day Reporting Program at the Licking County Common Pleas Court. Scott has been trained and certified in trauma-informed care, Bridges Out of Poverty, cognitive behavioral therapy, motivational interviewing, and is a certified court manager. Scott currently serves as chair of the Licking County Local Corrections Planning

Board, trustee for the Community Corrections Act on the Ohio Chief Probation Officer's Association executive committee, adult probation representative on the Supreme Court of Ohio's Commission on Specialized Dockets, and the adult probation representative on the Ohio team of the Regional Judicial Opioid Initiative.

MOLLY GAUNTNER received her Masters of Education degree in community agency counseling from Cleveland State University and is a licensed Professional Counselor (PC) and Licensed Chemical Dependency Counselor III (LCDC III) in the State of Ohio. During her more than 20 years with the Cuyahoga County Common Pleas Court, Molly served in various capacities including cognitive skills facilitator; substance abuse case manager, supervisor of the Sex Offender, Electronic Monitoring, Mental Health, and Developmental Disabilities units; co-coordinator of the court's Mental Health and Developmental Disabilities Court; deputy chief probation officer; and director of the court's Community Corrections Act, Prison Diversion Programs. Molly was instrumental in developing, implementing, and managing innovative probation and court programs, such as the department's continuous quality improvement program, the court's Evidence-Based Journal Entry project, and the department's restructuring to align with evidence-based practices in community corrections.

In July 2015, Molly became the chief probation officer of Franklin County Municipal Court Department of Pretrial and Probation Services. Since arriving at the Franklin County Municipal Court, Molly and her staff developed and implemented a comprehensive pretrial services program, have significantly, expanded their supervision and community programming responses, and have transitioned to becoming an evidence-based organization.

She currently serves as the president of the Ohio Chief Probation Officers Association and also is the second vice president of the Ohio Justice Alliance for Community Corrections (OJACC), where she also represents the Ohio Association of Pretrial Service Agencies and serves on the OJACC Adult Collaborative representing jail and recidivism reduction municipal court programs.

JON HANDLER is a professional surety bail bond agent who works with all people to assist them in posting surety bonds for friends, families, and anyone in need of assistance to secure release from jail. Jon believes all individuals deserve the option to bail and knows how to strategically and efficiently deliver that. Jon has successfully led his third-generation bail bond business that was started in 1960 by his grandfather David Handler. He has grown the business to help defendants not just in central Ohio, but all of Ohio. Jon holds a Bachelor of Arts in psychology from the University of Kansas.

JOHN MARTIN is a 1984 graduate of the Case Western Reserve University School of Law. He has been an attorney since 1984. From 1984 until 1995, John was a prosecutor with the United States Department of Justice, serving most of that time as an assistant United States attorney in Alexandria Virginia. From 1995 to 1997, he was an assistant visiting professor of law at the University of Akron, where he taught evidence, trial advocacy and criminal law. In 1997, John became an associate at the law firm of Fox and Grove, chartered in Chicago. In 2000, he returned to Cleveland, and served as staff attorney to the Hon. Ronald Suster of the Cuyahoga County Court of Common Pleas during the third "Sam Sheppard" trial in which the estate of Dr. Sheppard argued unsuccessfully that he was wrongfully convicted.

In June 2000, John joined the Cuyahoga County Public Defender's Office as an assistant public defender, where he continues to serve in the office's appellate division. During his career, John has tried more than 30 jury trials in federal and state courts and has argued more than 250 appellate cases before federal and state courts, including the Ohio Supreme Court, the Ohio Court of Appeals for the Seventh, Eighth, and Ninth Districts, and the United States Courts of Appeals for the Fourth and Sixth Circuits.

John is a co-author of Katz & Giannellli, Ohio Criminal Law, which is part of the Banks Practice Series published by Thompson Reuters and available on WestLaw. He currently teaches trial tactics as an adjunct faculty member at the Case Western Reserve University School of Law, teaches criminal law as an adjunct at Cuyahoga Community College, and previously served as an adjunct faculty member at the George Washington University School of Forensic Sciences. He also has lectured at the George Washington University National Law Center, the U.S. Attorney General's Advocacy Institute, the Federal Bureau of Investigation, the Federal Law Enforcement Training Center, the Cuyahoga Criminal Defense Lawyers Association, the Cleveland Metropolitan Bar Association, and the Ohio State Bar Association.

In 2009, John was appointed to the Ohio Supreme Court's Commission on Appointment of Counsel in Capital Cases (formerly the Rule 20 Committee) and currently is its chair. John recently completed his second term on the Ohio Supreme Court's Commission on the Rules of Practice and Procedure. During his tenure, he chaired the criminal rules and evidence rules committees.

DORIANNE G. MASON currently serves as the director of the Second Chance Project and Community Legal Clinics. The Second Chance Project provides free one-on-one legal assistance and community education workshops to hundreds of greater Cincinnati and Ohio residents. In 2016, she expanded the reach of the legal clinics to tackle the debilitating debt many face after a touch with the criminal justice system. Dorianne also uses litigation and education to increase employment and housing opportunities for people with criminal records and to address constitutional violations of incarcerated individuals.

Before joining OJPC, Dorianne practiced health care law. She worked as regulatory counsel for the D.C. Hospital Association, as staff attorney at the New Mexico Center on Law and Poverty and as a policy fellow at Services and Advocacy for GLBT Elders, Metropolitan D.C. She has experience advising the construction of a state insurance marketplace, crafting best practices in the hospital setting, and litigating public benefit eligibility and enrollment matters.

Dorianne is a 2016 Sargent Shiver Center Racial Justice Fellow, served on the Cincinnati Citizens Complaint Authority Board from 2016-2018 and as chair from 2017-2018, and currently serves on the steering committee of the Cincinnati Childhood Poverty Collaborative and advisory board for the Center for Employment Opportunities.

Dorianne served as a law clerk to the Honorable Tanya Walton Pratt in the United States District Court for the Southern District of Indiana. She received her J.D. from Indiana University Maurer School of Law in 2010, where she was a Sidney Eskenazi Scholar, and her B.B.A. in international business and marketing from Howard University in 2006.

HOLLY MATTHEWS is the executive director of the Criminal Justice Coordinating Council (CJCC), a unit of local government that provides criminal justice planning and integrated criminal justice system to 254 criminal justice agencies. In that role, she oversees a staff of 45 and a budget of $3.8 million. Under her leadership, CJCC has adopted a focus on reentry and has received $1.2 million in federal funding to assist adult and juvenile ex-offenders returning from jail or prison to Lucas County.

In recognition of her focus on increased cross-system information sharing, Holly was invited to participate in two workshops on data-driven justice at the White House and selected as one of 25 participants to attend the Behavioral Health Criminal Justice Leadership Academy. Along with other Lucas County leaders, she presented on "A Local Community's Efforts to Reduce Jail Incarceration and Criminal Justice Racial Disparities" at the University of Michigan College of Law's Innocent Until Proven Poor symposium.

MARK STANTON is chief public defender in Cuyahoga County. He has devoted his legal career to the criminal justice system. He began his career working as an assistant attorney general and then an assistant county prosecutor in its major trial division. In 1983, Mark began a private practice primarily focused on defending the rights of those accused of crimes. He has served as lead trial counsel in more than 200 major felony trials and 13 death penalty trials and has represented criminal defendants in more than 200 murder cases, as well as countless other serious charges. He also has represented criminal defendants in the Eighth District Court of Appeals and the Ohio Supreme Court. Mark also served as a magistrate judge in Parma Heights for seven years.

Mark's expertise in criminal defense has led him to speak at dozens of professional seminars on trial practice, expert witnesses, jury selection, closing argument, and the death penalty. He has received numerous professional awards and is a past president of the

Cuyahoga County Criminal Defense Lawyers Association. Mark chaired a committee tasked with reforming criminal justice system by providing open discovery in criminal cases and served on the Task Force on Judicial Excellence. He became the chief public defender of Cuyahoga County in May 2017.

CULLEN SWEENEY is the deputy chief public defender and appellate division supervisor at the Cuyahoga County Public Defender's Office. In 2003, Cullen graduated from the University of Wisconsin with joint degrees in law and public policy. Upon graduation, Cullen served as a law clerk for Federal District Court Judge Lesley Wells in Cleveland.

After completing his clerkship with Judge Wells, Cullen was hired as an assistant public defender in the appellate division of the Cuyahoga County Public Defender. At the public defender's office, he has handled more than 300 appeals in the Eighth District Court of Appeals and has argued 15 cases before the Ohio Supreme Court. He also has handled numerous cases in the Cuyahoga County Common Pleas Court and litigated habeas corpus petitions in federal court.

The Supreme Court *of* Ohio

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