

# The Supreme Court of Ohio

## Task Force to Examine the Ohio Bail System

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# The Supreme Court of Ohio

## Task Force to Examine the Ohio Bail System

### Agenda

February 27, 2019

10:00 a.m. – 2:00 p.m.

1. Welcome, Introductions, and Announcements
2. Approval of January 23, 2019 Minutes Judge Mary Katherine Huffman
3. Presentations See Below
4. Lunch Task Force Members
5. Discussion Task Force Members
6. Next Steps Judge Mary Katherine Huffman

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10:20 – 10:30	John Handler	President, Ohio State Bail Bond Association Central Director, Ohio Professional Bail Association
10:30 – 10:40	Jeffrey Clayton Executive Director	American Bail Coalition
10:40 – 10:50	Marc Ebel Director of Legislative Affairs	Triton Management Services, LLC
10:50 – 11:00	Molly Gauntner, President / Scott Fulton, CCA Trustee	Ohio Chief Probation Officers Association
11:00 – 11:10	Dorianne Mason Staff Attorney/Second Chance Director	Ohio Justice and Policy Center
11:10 – 11:20	Stephen Demuth Associate Professor Department of Sociology	Bowling Green State University
11:20 – 11:30	John Martin, Mark Stanton, Cullen Sweeney	Office of the Cuyahoga County Public Defender
11:30 – 11:40	Holly Matthews Executive Director	Lucas County Criminal Justice Coordinating Council
11:40 – 11:50	Michelle Butts Acting Director, Regional Court Services	Lucas County Common Pleas Court

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**Next Meeting Date: March 11<sup>th</sup> (10:00 a.m. – 2:00 p.m. in Room 281)**

# The Supreme Court of Ohio

## Task Force to Examine the Ohio Bail System

February 27, 2019

### PRESENTERS

**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. She 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 fifteen years, and also as licensed attorney for the past twelve 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. Mr. Clayton 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. Dr. Demuth'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, Dr. Demuth 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. Mr. Ebel 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. He is an avid outdoorsman who enjoys golfing, mountain biking, and sailing.

**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. Prior to coming to Adult Court Services, Scott was employed at the Licking County Municipal Court Adult Probation Department for eighteen years where he held the positions as 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 the 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 over 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 many 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 of 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.

Molly currently serves as the President of the Ohio Chief Probation Officers Association. She is also 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 where she represents 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 3rd generation bail bond business 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, Mr. Martin 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, Mr. Martin was an Assistant Visiting Professor of Law at the University of Akron, where he taught Evidence, Trial Advocacy and Criminal Law.

In 1997, Mr. Martin 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 had been wrongfully convicted.

In June, 2000, Mr. Martin 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, Mr. Martin 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.

Mr. Martin is a co-author of Katz & Giannelli, Ohio Criminal Law, which is part of the Banks Practice Series published by Thompson Reuters and available on WestLaw. Mr. Martin presently 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 formerly served as an adjunct faculty member at The George Washington University School of Forensic Sciences. He has previously lectured at the George Washington University National Law Center, the United States 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, Mr. Martin was appointed by the Ohio Supreme Court to its Commission on Appointment of Counsel in Capital Cases (formerly the Rule 20 Committee); he currently is the Commission Chair. In 2013, Mr. Martin was appointed by the Ohio Supreme Court to its Commission on the Rules of Practice and Procedure; he recently completed his second term; during his tenure, he chaired the Criminal Rules and Evidence Rules committees. Mr. Martin may be contacted at [jmartin@cuyahogacounty.us](mailto:jmartin@cuyahogacounty.us), or at the Office of the Cuyahoga Public Defender, 310 Lakeside Avenue, Suite 200, Cleveland, Ohio 44113; (216) 443-7580.

**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 healthcare 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 for her focus on increased cross-system information sharing, Matthews 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’s College of Law’s Innocent Until Proven Poor symposium

**MARK STANTON** is Chief Public Defender – 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, Mr. Stanton began a private practice primarily focused on defending the rights of those accused of crimes. He has served as lead trial counsel in over 200 major felony trials and 13 death penalty trials. He has represented criminal defendants in over 200 murder cases as well as countless other serious charges. He has also represented criminal defendants in the Eighth District Court of Appeals and the Ohio Supreme Court. He also previously served as a Magistrate Judge in Parma Heights for 7 years.

Mr. Stanton’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. Mr. Stanton 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. Mr. Stanton became the Chief Public Defender of Cuyahoga County in May of 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, Ohio.

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, Cullen has handled more than 300 appeals in the Eighth District Court of Appeals and has argued fifteen cases before the Ohio Supreme Court. He has also handled numerous cases in the Cuyahoga County Common Pleas Court and litigated habeas corpus petitions in federal court.

**Task Force Members in Attendance**

**Hon. Mary Katherine Huffman (Chair)**  
Montgomery County Court of Common Pleas

**Sara Andrews**  
Director, Ohio Criminal Sentencing  
Commission

**Hon. Andrew Ballard**  
Lawrence County Court of Common Pleas

**Michael Barhorst**  
Sidney Mayor  
President, Ohio Municipal League

**Vallie Bowman-English, Esq.**  
Clerk of Court, Toledo Municipal Court

**Russell Brown, Esq.**  
Court Administrator  
Cleveland Municipal Court

**Gwen Callender, Esq.**  
Chief Legal Counsel  
Fraternal Order of Police of Ohio, Inc.

**Daniel Dew, Esq.**  
Legal Fellow, The Buckeye Institute

**Julie Ehemann**  
President, County Commissioners  
Association of Ohio  
Shelby County Commissioner

**Hon. Todd L. Grace**  
Athens County Municipal Court

**Meghan Guevara**  
Pretrial Justice Institute

**Hon. Brian F. Hagan**  
Rocky River Municipal Court

**Tim Horsley, Esq.**  
Cincinnati City Prosecutor

**Hon. Mark A. Hummer**  
Franklin County Municipal Court

**James Lawrence**  
President, Oriana House

**Matt Lutz**  
Muskingum County Sheriff's Office

**Charles Eddie Miller**  
President, Ohio Bail Agents Association

**Christopher Nicaastro**  
Chief of Criminal Justice Services  
Ohio Department of Mental Health and  
Addiction Services

**Jocelyn Rosnick**  
Assistant Policy Director, ACLU of Ohio

**Hon. John J. Russo**  
Cuyahoga County Court of Common Pleas

**Tom Sauer**  
President, Ohio Association of Pretrial  
Services Agencies  
Hamilton County Pretrial Services

**Michael Streng, Esq.**  
President, Ohio Association of Criminal Defense  
Lawyers  
Bridges, Jilisky, Streng, Weller & Gullifer,  
LLC

**Judy C. Wolford, Esq.**  
Pickaway County Prosecuting Attorney

**Timothy Young, Esq.**  
Office of the Ohio Public Defender

## **Opening Remarks**

A brief presentation of the core principles for pretrial release and bail was made by Chief Justice Maureen O'Connor. The core principles are promulgated by the National Taskforce on Fines, Fees, and Bail Practice. These principles are designed to be a point of references for state and local court systems in the assessment of current court system structure and practices.<sup>1</sup>

In particular, Principles 5.1, 5.2, and 5.3 provide a structure within which the Task Force to Examine the Ohio Bail System (Task Force) should consider the Ohio bail system. It was requested by the Chief Justice that members of the Task Force use these guiding principles as they examine Ohio's bail system. These principles include:

**Principle 5.1. Pretrial Release.** Money-based pretrial detention practices should be replaced with those based on a presumption of pretrial release by the least restrictive means reasonably to assure appearance in court and promote public safety. States should adopt statutes, rules, and policies reflecting a presumption in favor of pretrial release based on personal recognizance. If risk assessment protocols are used, they should be validated and transparent and should not result in differential treatment by race, ethnicity, or gender. Such tools are not substitutes for individualized determinations of release conditions. Judges should not detain an individual based solely on an inability to make a monetary bail or satisfy any other Legal Financial Obligation. Judges should have authority to use, and should consider the use of, all available non-monetary pretrial release options. Judges may only use preventative detention if there is clear and convincing evidence that an individual poses a serious risk of danger to the community or flight. Preventative detention may only be ordered after a detention hearing that affords an individual all appropriate due process protections.

**Principle 5.2. Bail Schedules.** Fixed monetary bail schedules should be eliminated and their use prohibited.

**Principle 5.3. Pre-Payment or Non-Payment.** Courts should not impose monetary bail as prepayment of anticipated Legal Financial Obligations or as a method for collecting past-due Legal Financial Obligations.

## **Purpose and Objectives of Task Force**

The Task Force was created by the Chief Justice of the Supreme Court of Ohio to examine Ohio's bail system under Crim.R. 46 and to make recommendations that will ensure public safety and the accused's appearance at future court hearings, while protecting the presumption of innocence. The Task Force is charged with the study of bail and pretrial systems used in other states, and to review any federal or state

<sup>1</sup> National Center for State Courts, National Task Force on Fines, Fees, and Bail Practices, *Principles on Fines, Fees, and Bail Practices*, 2 (December 2017).

<https://www.ncsc.org/~media/Files/PDF/Topics/Fines%20and%20Fees/Principles-Fines-Fees.ashx>

litigation pertaining to the use of bail or the elimination of money bail.<sup>2</sup> The recommendations to Crim.R. 46 should:

- a) Determine whether the rule should require courts to use a risk assessment tool and if so, whether that tool should be a validated tool;
- b) If it is determined that courts should be required to use a risk assessment tool, the Task Force should recommend any necessary amendments to the rule to mandate the use of such tool and the process for courts to select and adopt a tool;
- c) Review the use and utility of bond schedules;
- d) Recommend any necessary amendments to the rule pertaining to bond schedules.

The Task Force is further charged with a review Ohio's bond practices to determine the appropriate balance between recognizance bonds, pretrial monitoring, and cash or secured bonds and to address any other topics the task force deems necessary to examine Ohio's bail system.

### **Presentation from the Pretrial Justice Institute (PJI)**

Representatives from the Pretrial Justice Institute provided the Task Force with a snapshot of bail reform from a national perspective. The information presented included research regarding recidivism and failure to appear data for the pretrial population that is jailed compared with the same population released on non-money bonds. Collateral consequences, such as increased jail bed usage and the creation of racial and socioeconomic disparities was also detailed during the PJI presentation. Examples of pretrial reform pilot projects in other states were presented.

The PJI staff reviewed and compared two pretrial assessment tools: the Ohio Risk Assessment System – Pretrial Assessment Tool (ORAS-PAT) and the Virginia Pretrial Risk Assessment Instrument (VPRAI). The Arnold Foundation's Public Safety Assessment tool was also reviewed; the use of this tool is to classify a defendant's risk to commit new criminal activity and their failure to appear. PJI suggests an evaluation of a pretrial assessment tool should include: demographics, factors & definitions, transparency, statistical rigor, usefulness, interview, and the potential for perpetuating or exacerbating disparities. Context is required in developing an effective pretrial system; the assessment is one tool, but this tool is only as useful as the judge allows it to be, through their use of discretion and decision making.

### **Group Discussion, facilitated by Judge Mary Katherine Huffman, Chairperson**

Discussion by the Task Force included the following topics:

#### *Mandate and Cost of Implementation.*

- The consistent application of pretrial assessment tools across the state, particularly when the judge is the final decision maker, presents some complication for Ohio as a non-unified judicial system. It was suggested that a mandate from the Supreme Court of Ohio would be necessary to ensure that all local courts were using a validated pretrial assessment tool, if such tool was endorsed by this Task Force.
- An additional benefit of consistent application of pretrial tools across the state is the collection of data to measure success.

<sup>2</sup> The Supreme Court of Ohio, *Operating Guidelines for the Task Force to Examine the Ohio Bail System*, Section 1.02 (A)(1) (2019). <https://www.supremecourt.ohio.gov/Boards/bailSys/guidelines.pdf>

- With a mandate, there comes an obligation to take action; this action is usually associated with a cost. For example, in the instance of a pretrial assessment tool, there must be a staff person trained to use the tool as well as staff time made available to implement the tool. It is important to consider the cost incurred by the agency tasked with the implementation of the tool (this includes the court staff but could also include probation staff, sheriff's office, jail personnel). Estimating the cost of using a pretrial assessment tool is important to local communities.
- It was suggested that a state-wide tool provides the opportunity for leveraging a better cost for obtaining and using a pretrial assessment tool, as opposed to each court negotiating its own rate to obtain the tool.

#### *Presumptions of Release and No-Money Bail*

- The Ad Hoc Committee included in its final report that “if a defendant is eligible for release under the Ohio Constitution, and the trial court determines that the defendant should be released pretrial, the trial court should first consider nonfinancial release.”<sup>3</sup> Discussion during the Task Force meeting indicated a favor toward this philosophy.
- It was discussed that the presumption of release, particularly when an individual is charged with a non-violent drug offense, may not adequately contemplate the harm to a community when those charged are immediately released. The impact of this philosophy is not just on the courthouse and jail, but it also reflects on local law enforcement and prosecutors. It was discussed that there is some need for input from the community on this issue.
- The Ad Hoc Committee recommended that bond schedules would be required to be reviewed yearly and that this requirement should be added to the Rules of Superintendence.<sup>4</sup>
  - The Task Force discussed this proposal and proffered the idea of the total elimination of a bond schedule.
  - The Task Force also discussed the impact of removing a bond schedule. It was suggested that the use of a standard bond schedule allows for consistency and predictability within the jurisdiction while removing a bond schedule will result in less cohesiveness across a county, rather than more.

#### *Data Collection.*

- The need for data collection was easily agreed upon by the Task Force. There is concern about the cost to local courts in collecting this information.
- There are a few sites across the state participating in a review of the data collection to identify gaps in data collection. This information will help to inform researchers of the effectiveness of pretrial assessment tool usage. This project runs until September 2019, after which the information collected will be analyzed.

#### *Technical Assistance*

- There was a discussion over the use of mentor courts to provide technical assistance to courts that have not previously used a validated risk assessment tool.
- In instances where a court may not have adequate resources to use a validated risk assessment tool, it was discussed whether this tool could be implemented by defense counsel and used by the court in its decision making.
- Further discussion on the cost of using validated assessment tools brought forth the idea that using technology to share resources, particularly in using web-based tools to conduct interviews, may be an alternative to the traditional implementation of pretrial assessment tools. An example

<sup>3</sup> *Id.* at 11.

<sup>4</sup> *Id.* at 15.

was given where video conferencing between a jail and a courthouse is used to complete the interview portion of the assessment tool.

- When looking at using a tool to be used across the state, it is important to consider whether the interview portion of the assessment tool can be optional, with discretion of the local court.

The Task Force provided suggestions of organizations to be invited to provide viewpoints for consideration during the next Task Force meeting scheduled for February 27, 2019. The third and final meeting of this Task Force is scheduled for March 11, 2019.

To the extent required by Article I, Section 10a of the Ohio Constitution or by the Revised Code, the trial court shall, upon request, provide the alleged victim the opportunity to be heard in any public proceeding in which a right of the alleged victim is implicated, including but not limited to public proceedings involving release, plea, sentencing, or disposition.

**Proposed Staff Notes (2019 Amendment)**

**Crim.R 37-Victim's Opportunity to be Heard**

Previously reserved, this new rule was added to comply with the 2017 amendment to Article I, Section 10a of the Ohio Constitution, also known as Marsy's Law.

**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.

## **OHIO RULES OF EVIDENCE**

### **RULE 615. Separation and Exclusion of Witnesses.**

(A) Except as provided in division (B) of this rule, at the request of a party the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion. An order directing the "exclusion" or "separation" of witnesses or the like, in general terms without specification of other or additional limitations, is effective only to require the exclusion of witnesses from the hearing during the testimony of other witnesses.

(B) This rule does not authorize exclusion of any of the following persons from the hearing:

(1) a party who is a natural person;

(2) an officer or employee of a party that is not a natural person designated as its representative by its attorney;

(3) a person whose presence is shown by a party to be essential to the presentation of the party's cause;

(4) in a criminal proceeding, a victim of the charged offense to the extent that the victim's presence is authorized by the Ohio Constitution or by statute enacted by the General Assembly. As used in this rule, "victim" has the same meaning as in the provisions of the Ohio Constitution providing rights for victims of crimes.

**[Existing language unaffected by the amendments is omitted to conserve space]**

## Overall Scores and Grading

The measures described above were converted into a point system that has been translated into a standard A-to-F grading system for clarity and ease of use. States were awarded points for each of the measures described in the first three columns below. A bonus point was added for any state that had both 100% of its jurisdictions using evidence-based

Pretrial Detention Rate		Use of Validated Pretrial Assessment		Functional Elimination of Money Bail		Bonus Point (for combination 100% pretrial assessment and elimination of money bail)		Overall Score & Grade
<10 = 2 pts	●	76% to 100% = 4 pts	●	100% = 1 pt	●	Yes = 1	●	7 pts = A
10 to 20 = 1 pt	◐	51% to 75% = 3 pts	◐	0% = 0 pts	○	No = 0	○	5-6 pts = B
21 & up = 0 pts	○	26% to 50% = 2 pts	◑					3-4 pts = C
		1% to 25% = 1 pt	◒					2 pts = D
		0% = 0 pts	○					0-1 pts = F

## Results By State

	Pretrial Detention Rate	Use of Validated Pretrial Assessment	Elimination of Money Bail	Bonus Point	Grade
Alabama	◐	○	○	○	F
Alaska	○	○	○	○	F
Arizona	◐	●	○	○	B
Arkansas	◐	○	○	○	F
California	◐	◑	○	○	D
Colorado	◐	●	○	○	B
Connecticut	◐	●	○	○	B
Delaware	-	○	○	○	I
Florida	◐	◑	○	○	D
Georgia	◐	○	○	○	F
Hawaii*	●	●	○	○	B
Idaho	◐	○	○	○	F
Illinois	◐	◑	○	○	C
Indiana	◐	○	○	○	F
Iowa	●	○	○	○	D
Kansas	◐	◑	○	○	D
Kentucky	◐	●	○	○	B

\*Results, scores, and grade have been changed to reflect more accurate data.

	Pretrial Detention Rate	Use of Validated Pretrial Assessment	Elimination of Money Bail	Bonus Point	Grade
Louisiana	○	◐	○	○	F
Maine	●	○	○	○	D
Maryland	◐	◐	○	○	C
Massachusetts	●	○	○	○	D
Michigan	●	◐	○	○	C
Minnesota	●	◐	○	○	C
Mississippi	◐	○	○	○	F
Missouri	◐	○	○	○	F
Montana	◐	○	○	○	F
Nebraska	◐	○	○	○	F
Nevada	◐	●	○	○	B
New Hampshire	●	○	○	○	D
New Jersey	◐	●	●	●	A
New Mexico	○	◐	○	○	D
New York	●	◐	○	○	C
North Carolina	◐	◐	○	○	D
North Dakota	◐	○	○	○	F
Ohio	●	◐	○	○	C
Oklahoma	◐	○	○	○	F
Oregon	●	◐	○	○	C
Pennsylvania	◐	◐	○	○	D
Rhode Island	●	●	○	○	B
South Carolina	◐	○	○	○	F
South Dakota	◐	◐	○	○	C
Tennessee	◐	○	○	○	F
Texas	◐	◐	○	○	D
Utah	●	●	○	○	B
Vermont	●	○	○	○	D
Virginia	◐	●	○	○	B
Washington	●	◐	○	○	C
West Virginia	◐	○	○	○	F
Wisconsin	◐	◐	○	○	C
Wyoming	◐	○	○	○	F

Pretrial Detention Rate: < 10 = ● ; 10 to 20 = ◐ ; 21+ = ○  
 Pretrial Assessment: 76-100% = ● ; 51-75% = ◐ ; 26-50% = ◐ ; 1-25% = ○ ; 0% = ○  
 Eliminated Money Bail: 100% = ● ; 0% = ○  
 Bonus Point: Yes = ● ; No = ○

For detailed results, see Appendix.

# Appendix

	Pretrial Detention Rate		Use of Validated Pretrial Assessment		Elimination of Money Bail		Bonus Point		Overall	
	Rate per 10,000 residents	Score	% Living in county using assessment	Score	% Living in county that has eliminated money bail	Score	Assessment used, no money	Score	Score	Grade
Alabama	19.4	1	0	0	0	0	No	0	1	F
Alaska	20.1	0	0	0	0	0	No	0	0	F
Arizona	16.7	1	100	4	0	0	No	0	5	B
Arkansas	13.1	1	0	0	0	0	No	0	1	F
California	11.7	1	2.9	1	0	0	No	0	2	D
Colorado	10.5	1	87.4	4	0	0	No	0	5	B
Connecticut	10.2	1	100	4	0	0	No	0	5	B
Delaware	n/a	n/a	0	0	0	0	No	0	0	I
Florida	17.6	1	8.9	1	0	0	No	0	2	D
Georgia	19.5	1	0	0	0	0	No	0	1	F
Hawaii*	6.8	2	100	4	0	0	No	0	6	B
Idaho	11.5	1	0	0	0	0	No	0	1	F
Illinois	10.8	1	46.2	2	0	0	No	0	3	C
Indiana	15.7	1	0	0	0	0	No	0	1	F
Iowa	9.9	2	0	0	0	0	No	0	2	D
Kansas	14.1	1	20.1	1	0	0	No	0	2	D
Kentucky	16.1	1	100	4	0	0	No	0	5	B
Louisiana	29.9	0	8.4	1	0	0	No	0	1	F
Maine	5.1	2	0	0	0	0	No	0	2	D
Maryland	12.8	1	27.6	2	0	0	No	0	3	C
Massachusetts	7.7	2	0	0	0	0	No	0	2	D
Michigan	6.8	2	27.2	2	0	0	No	0	4	C
Minnesota	7	2	22.3	1	0	0	No	0	3	C
Mississippi	17.7	1	0	0	0	0	No	0	1	F
Missouri	14.6	1	0	0	0	0	No	0	1	F
Montana	12.8	1	0	0	0	0	No	0	1	F
Nebraska	13.1	1	0	0	0	0	No	0	1	F
Nevada	17.9	1	89.1	4	0	0	No	0	5	B
New Hampshire	8.4	2	0	0	0	0	No	0	2	D
New Jersey	14	1	100	4	100	1	Yes	1	7	A
New Mexico	21.8	0	32.5	2	0	0	No	0	2	D
New York	9.1	2	43.2	2	0	0	No	0	4	C
North Carolina	15.5	1	10.4	1	0	0	No	0	2	D
North Dakota	11.5	1	0	0	0	0	No	0	1	F
Ohio	9.1	2	29.3	2	0	0	No	0	4	C
Oklahoma	13.4	1	0	0	0	0	No	0	1	F
Oregon	8	2	19.5	1	0	0	No	0	3	C
Pennsylvania	15.9	1	9.6	1	0	0	No	0	2	D
Rhode Island	7.4	2	100	4	0	0	No	0	6	B
South Carolina	17.5	1	0	0	0	0	No	0	1	F
South Dakota	13.2	1	34.3	2	0	0	No	0	3	C
Tennessee	16.4	1	0	0	0	0	No	0	1	F
Texas	18	1	16.5	1	0	0	No	0	2	D
Utah	9.3	2	100	4	0	0	No	0	6	B
Vermont	7	2	0	0	0	0	No	0	2	D
Virginia	13.8	1	85.3	4	0	0	No	0	5	B
Washington	9.1	2	3.4	1	0	0	No	0	3	C
West Virginia	11.7	1	0	0	0	0	No	0	1	F
Wisconsin	10.1	1	25.7	2	0	0	No	0	3	C
Wyoming	February 26, 2019	1	0	0	0	0	No	0	Page 19	F

\*Results, scores, and grade have been changed to reflect more accurate data.

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