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For
The Ohio Supreme Court
Task Force to Examine the Ohio Bail System

Madm Chair and the fellow members of the Supremem Court Task Force To Examine The Ohio Bail System.Thank you for permitting met to testify today. I represent the Ohio Professional Bail Association and my own business Handler Bail Bonds. I could talk about a number of issues with this proposed rules change such as:

1. Setting up a risk management bureaucracy where one is not needed which may infringe on a defendant's right to privacy
2. The loss of discretion and professional leeway given Judges
3. The cost of the unfunded program
4. The situations created in other states who are trying to use the proposed software/risk assessment sytem.

Technology will continue to improve and I would venture to say that software companies are going to improve the assessment tool. But it is unproven, unreliable and yet to share data on effectiveness.

I am here to show you some of the unintended consequences of this Rule change and how it will affect the citizens of Ohio.

If this system is put into effect there is no check or balance on the defendant to motivate them to show up at hearings or trial. That is the role of the bail bond system.

As it stands the Criminal Rule 46 now allows for the pretrial release of most offenses with a personal recognizance bond at the discretion of the judge. In fact, Judges are given tremendous leeway in allowing the unsecured release to criminal defendants. The current rule specifies "release on the least restrictive mean necessary". For most financial surity is required in the form of the bail or bond. The new Rule would gather information using an unproven expensive system. If there is no potential for financial loss or threat of incarceration, why would a defendant show up knowing the system is underfunded, understaffed and there is a great likelihood they will never be caught by the police?

Here are some of the unintended consequences of the new rule:

1. What will happen if the defendant does not appear? We already have an overburdened system with media criticism already brewing over unserved warrants in the State of Ohio. Law enforcement has neither the time or, to be frank, interest serving the warrants. Who is going to do it? This has been a role of the bail bond system.
2. Bureaucracy will be increased and require public funding to operate. Do we need more internal government bureaucracy? This has been handled by the bail bond system with no cost to the taxpayer. This has been a role of the bail bond sytem.
3. What if the system does not work? For example, a domestic violence defendant is released and goes back home and murders their partner? The media scrutiny will be swift and righty deserved.

The threat of ruin of one type of another is a great motivator. This has been the role of the bail bond system.

4. What if the new system does not result in defendants showing up and there is a desire to the revert back to the bail bond system. If my colleagues and I are out of business how will the system be able to regain the respect of the citizenry?

We cannot support a system which will put our businesses out of business and jeopardizes the people of the State of Ohio.

Let me share a case with you.

Case number 2017crb14632
State of Ohio
(Plaintiff)
Vs.
Rich McKinley Puckett
(Defendant)

Mr. Puckett was given a $5,000 cash or surety bond why my company HLS Bonding Company was paid the state-mandated 10 percent fee to post his bond. Mr. Puckett failed to appear at his first scheduled court date. Franklin County Municipal court issued an order with attached bond forfeiture notice faxed to my company.

Now at this point with my personal money and reputation on the line my experience goes into action. In our specific county, we have 30 days to present this individual in court. If we fail the court will get the $5000 with the money is used towards a general fund for domestic violence victims. However, as professional surety bondsman, our job is to produce the defendant appear in Court and answer to charges.

Mr. Puckett needs to be held ACCOUNTABLE to his charges. Again the SOLE PURPOSE of bail is to guarantee the defendant to court. Now if Mr. Puckett were released under the new system what happens if he fails to appear? In this case, he fled to Boise, Idaho. Now I ask you, will pre-trial services track him down there? Who will pay for that, the taxpayer? How will that be justified to taxpayers if they aren't paying for it now? We used our experience and resources to track Mr. Puckett down, detain him, make sure he was placed in NCIC, (national database) for wanted criminals.

Typically only felonies are placed in this database which made it somewhat tricky however this being a misdemeanor charge we needed to take the extra step to have it added correctly. He was brought back to Franklin County to answer to charges and face the accuser. This is what we do. I would ask the obvious question, would the county or state have the resources or time to do that?

I have the greatest respect for our judicial system and would be the first to say we could improve our processes and systems. But all those improvements cost money. Under the current system costs and risk are borne by the bail bondsman and the defendant, not the taxpayer. It is beyond understanding why anyone would want saddle the taxpayer, most of whom never see the inside of a courtroom, with the cost of a new unproven program.

This is a battle between using unproven technology tools and the trust in the judicial officers that oversee the day to day operations of the court. Judges and prosecutors make these decisions every day as highly

trained and specialized professionals. The message these changes would send is that the State of Ohio simply no longer trusts elected judges do their job. Instead, judges must defer their discretion to a "mystery box" in order to gain insight as to who should be granted Bail and who should be detained. Judges make bail determinations with an eye on all relevant information and make an individualized assessment determining what actions will result in justice. The proposed software is a probability engine that crunches numbers in a vacuum to arrive at a statistical average. It is literally judging people based on how thousands of other individuals in similar circumstances performed. We are awaiting results from States like New Mexico to tell us of their results.

Setting aside the vast implications of racial or economic disparity that such an assessment would include, this process is the exact antithesis of equal justice under the law. This system would pave the way for simple "assembly line justice" with a removal of the human element and little oversight.

Adding a complex system of risk assessment tools and data collection into the rule only serves to burden an already strained system with additional layers of paperwork and costs. In addition, the assessment process itself could be considered a violation of due process rights. It's conceivable that some of the data collected in the interview could be self-incriminating. No right to privacy exists with the risk assessment data, in essence, a defendant could be coerced into volunteering potentially damaging information with the dangled promise of a free release. Actually, I cannot understand why defendants rights and civil liberty groups are not here screaming that the plan is a violation of defendants rights.

My assessment of the proposed Ciminal Rule 46 changes is simple, Do we really have so little faith in our elected judges that we would defer to a machine to decide the fate of Ohio citizens simply in the name of "progress". Moreover, the framework already is in place to allow judges to accomplish all the assessing needed at a fraction of the price? There is nothing logical about changing criminal Rule 46 beyond the abrogation of responsibility from the Court and moving it to a software package. When the system fails everyone is going to blame the software, not those who supported this unproven product and who destroyed a sector of the business community who has done everything to ensure defendants appear in Court. Victims will not have the solace of knowing that someone will find the defendant and make them face their accusers in court.

When this system starts to cost too much, there is no more bail bond system and the taxpayers see the burden this change lays upon them, they will not believe it is the software's fault but begin to question who destroyed the system which cost them so little. Inevitably this system will fail and the unintended consequences will take years to fix. If we as Ohioans trust our judges enough to elect them, we should trust them enough to be able to carry out their duties unhindered by political pandering to a passing fad of a digital justice system. Ohio is should not revise Rule 46 to its current form.