

Ohio's Pretrial Justice System

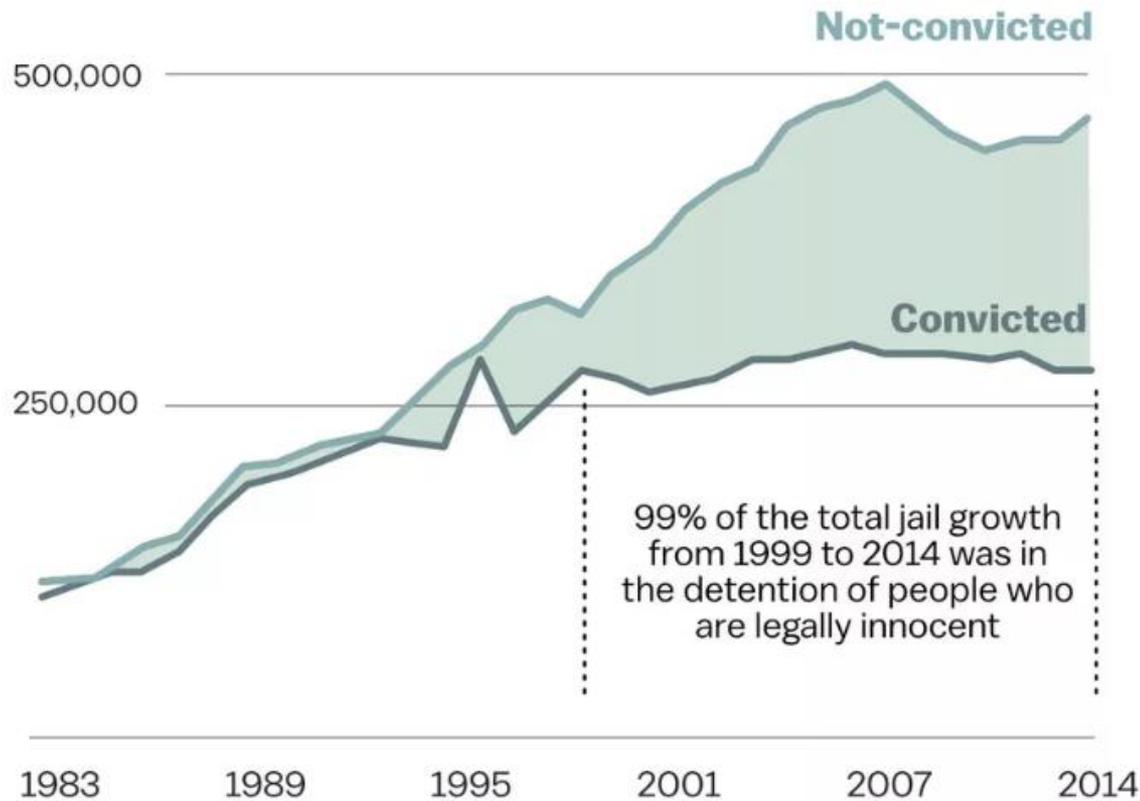
Hon. Reginald Routson, Hancock County Court of Common Pleas

Hon. Stephen McIntosh, Franklin County Court of Common Pleas

Some Thoughts on Bail



Number of convicted and non-convicted people in local jails, 1983-2014

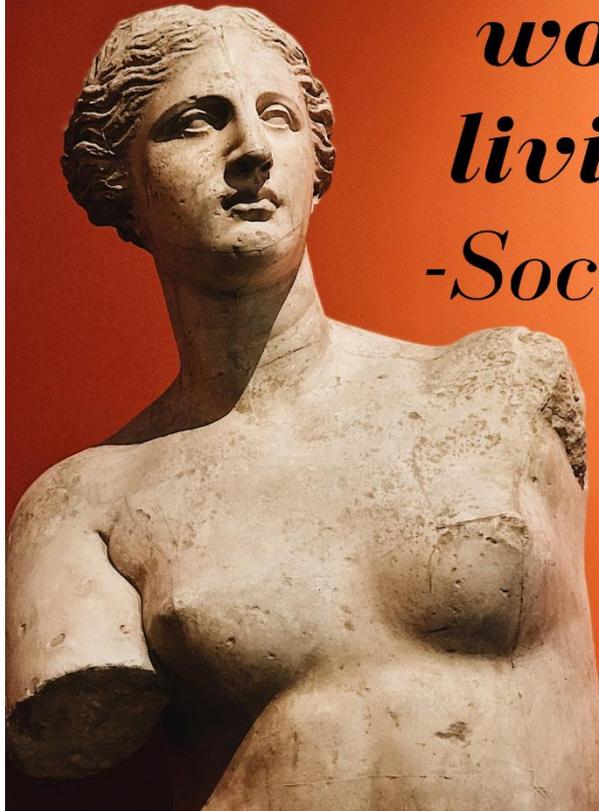


Source: Peter Wagner/Prison Policy Initiative

Vox



*"An
unexamined
life is not
worth
living."
-Socrates*



The Purpose of Cash Bail Is.....?



Ohio Constitution

Article 1 § 9. Bail; cruel and unusual punishments (July 1, 1998)

- All persons shall be bailable by sufficient sureties, except for a person who is charged with a capital offense where the proof is evident or the presumption great, and **except for a person who is charged with a felony where the proof is evident or the presumption great and where the person poses a substantial risk of serious physical harm to any person or to the community.**



Ohio Constitution

Article 1 § 9. Bail; cruel and unusual punishments (July 1, 1998)

- Where a person is charged with any offense for which the person may be incarcerated, the court may determine at any time the type, amount, and conditions of bail. Excessive bail shall not be required; nor excessive fines imposed; nor cruel and unusual punishments inflicted.



Ohio Constitution

Article 1 § 9. Bail; cruel and unusual punishments (July 1, 1998)

- The General Assembly shall fix by law standards to determine whether a person who is charged with a felony where the proof is evident or the presumption great poses a substantial risk of serious physical harm to any person or to the community.

Resulting in enactment of R.C. § 2937.222



Ohio Constitution

Article 1 § 9. Bail; cruel and unusual punishments (July 1, 1998)

- Procedures for establishing the amount and conditions of bail shall be established pursuant to Article IV, Section 5(b) of the Constitution of the state of Ohio.

Resulting in amendments to Crim.R. 46



Mixed Messages

- The purpose of bail is to ensure that the defendant appears at all stages of the criminal proceeding.

Bland v. Holden, 21 Ohio St.2d 238 (1970)

- Primary purpose of bail is to secure defendants appearance in court.

Smith v. Leis, 106 Ohio St.3d 309 (2005)



Mixed Messages

- The purpose of bail is primarily to secure the accused's presence in court. In addition to this purpose, Section 9, Article I of the Ohio Constitution as amended recognizes the need to ensure public safety as a consideration for setting bail in felony cases.

King v. Telb, 2005-Ohio-800 (6th)



Mixed Messages

- Keeping an accused in jail by excessive bail is as much a denial of his constitutional rights as refusing to fix bail.

State v. Bevacqua, 147 Ohio St. 20 (1947)



What is the Connection?



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The state's legitimate concern for the safety of the community, the victims, witnesses, and law enforcement officers is better addressed by imposing the conditions of no contact and electronically monitored home detention than by imposing unreasonable bail, which is prohibited by the Constitution.

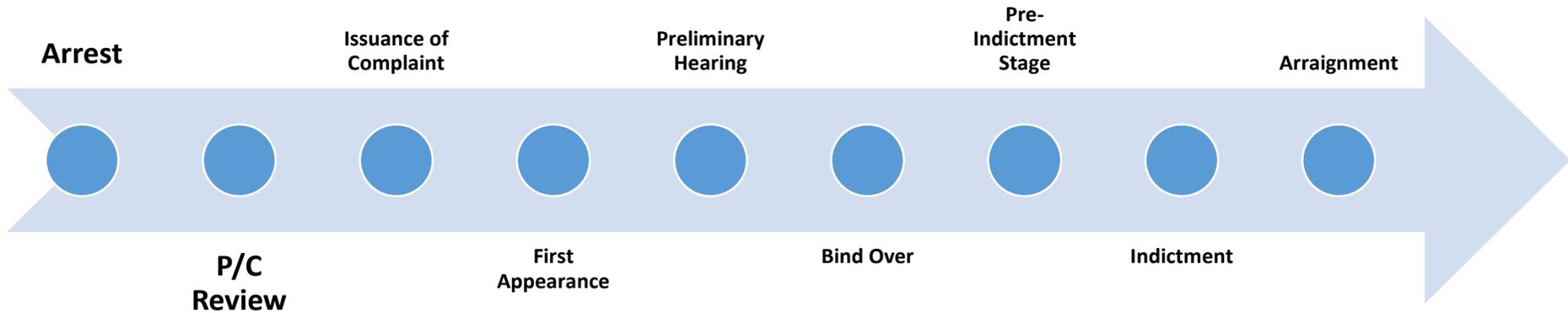
Palmer-Tesema v. Pinkney, 2018-Ohio-1852 (8th)



Look Upstream



Timeline



Inertia: a tendency to do nothing or to remain unchanged: "the bureaucratic inertia of government"



Indictment Process - Who's In Charge?

The grand jury itself is under the **control and direction of the court** of common pleas. It is essentially an arm of the court.

State ex. Rel. Shoop v. Mitrovich, 4 Ohio St.3d 220 (1983)



How Served?

RULE 9. Warrant or Summons Upon Indictment or Information

(A) Issuance. Upon the request of the prosecuting attorney the clerk shall forthwith issue a warrant for each defendant named in the indictment or in the information. The clerk shall issue a summons instead of a warrant where the defendant has been released pursuant to Rule 46 and is indicted for the same offense for which he was bound over pursuant to Rule 5.

In addition, the clerk shall issue a summons instead of a warrant upon the request of the prosecuting attorney or by direction of the court.





THE SUPREME COURT *of* OHIO

REPORT *and* RECOMMENDATIONS *of the*

Task Force

*to Examine Improvements
to the Ohio Grand Jury System*



JULY 2016



Approaches by Other States

Arizona Crim.R 3.1

(a) **Issuance.** A summons commands a defendant to appear before a magistrate. A warrant commands the arrest of a defendant by a peace officer for the purpose of bringing a defendant before a magistrate.

(1) *Return of Indictment.* If a grand jury returns an indictment, the court must promptly issue a warrant or summons, or a notice of supervening indictment under Rule 12.6(c).

(b) **Preference for Summons.** Unless there is good cause to issue a warrant, a court should issue a summons if the defendant is not in custody, the offense charged is bailable as a matter of right, and there is reason to believe that the defendant will appear. If a prosecutor requests a warrant, the prosecutor must state the reasons for issuing a warrant rather than a summons.





OHIO

CRIMINAL SENTENCING COMMISSION

**Ad Hoc Committee on
Bail and Pretrial Services**

Report & Recommendations
March 2017



Alternatives to Pretrial Detention

Recommendations:

- 1) Increase awareness and use of a continuum of alternatives to detention.
- 2) Law enforcement should increase 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.



The End

