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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

H.B. 315  
(1\_134\_1369-2)  
134<sup>th</sup> General Assembly

## Fiscal Note & Local Impact Statement

[Click here for H.B. 315's Bill Analysis](#)

**Version:** In House Criminal Justice

**Primary Sponsors:** Reps. Leland and Hillyer

**Local Impact Statement Procedure Required:** Yes

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### Highlights

- The bill's conditions of release and nonmonetary bond provisions are likely to: (1) reduce the amount of bond money and associated fees collected by the courts annually, and (2) reduce the pretrial jail stay of certain accused persons. The annual net of these two factors (revenue reductions and jail expenditure savings) is indeterminate.
- Common pleas, municipal, and county courts generally will incur significant annual costs related to hearing timelines, hearing reminder notifications, pretrial supervision, and generally to comply with the bill's provisions. These costs include the potential need to hire additional staff and to purchase technology.
- Local prosecutors' offices and public defenders/appointed counsel may incur additional administrative and staffing expenses to prepare for and attend hearings on additional days outside of current practice.

### Detailed Analysis

The bill generally requires a court to make a preliminary pretrial release decision for a person arrested for the alleged commission of a crime within 48 hours of the accused's arrest and prioritizes the use of monetary bail alternatives such as release on personal recognizance and conditional release. When setting monetary bail, the bill requires the court to determine an accused's ability to pay.

As explained in more detail below, the bill is likely to decrease expenses for local jails by reducing the overall pretrial population, while it is likely to increase costs for local criminal justice systems (courts, prosecutors, and public defenders/appointed counsel) to meet the shortened statutory timeline for initial hearings and for pretrial supervision, and decrease revenues realized through monetary bail and bail forfeiture.

## **Criminal court impact**

The bill will increase administrative costs for county and municipal criminal justice systems through increased hearings and an expedited timeline for hearings, which may require court staff, prosecutors, and public defenders/appointed counsel to be available and work outside of current court business hours. The bill will reduce county and municipal expenses for pretrial detention, increase costs for pretrial supervision, and reduce bond and bail revenues. The magnitude of those changes is dependent on the implementation of the bill by the local courts and will likely vary by jurisdiction.

### **Preliminary pretrial release decision**

If after arrest, the accused is detained, the bill requires a court to make a preliminary pretrial release decision for the accused not later than 48 hours after the accused's arrest. In making the preliminary pretrial release decision, the court is required to order any one of the following: (1) release on personal recognizance, (2) a conditions of release hearing to be held within 48 hours of the accused's arrest, or (3) a detention hearing for certain serious crimes.

When ordering that an accused person be released on personal recognizance, the court is permitted to order and make a written entry of certain conditions the accused must abide by, such as requirements that they not commit another offense, avoid contact with an alleged victim or witnesses, or that the accused person not leave a specific area or visit a specific location.

When an accused person is released on personal recognizance, with or without conditions, the court is required to provide the accused with reminders of court appearances by telephone, text message, and electronic message, if the accused provided the court with contact information. The court is prohibited from assessing any fee or monetary assessment related to processing the accused's release.

These provisions will likely increase administrative and staffing costs to common pleas, municipal, and county courts. Additionally, hearing reminder notifications may require additional staff and technology resources in courts that are not currently properly equipped to implement these provisions. The magnitude of the expenses will depend on the current operations of each court, but could be significant for some.

### **Local prosecutors and public defenders/appointed counsel**

The bill allows prosecutors to make motions for the court to order hearings for conditions of release and detention that may result in the need for prosecutors and public defenders/appointed counsel, if assigned, to be available for more hearings on more days than is current practice. The bill's impact may be increased annual expenses, the magnitude of which will depend on what each prosecutor's office is doing as current practice.

### **Conditions of release**

If the court (upon a motion from the prosecutor or the court itself) determines that a hearing to set conditions for release is necessary, the hearing must be held within 96 hours of the accused's arrest. Depending on the nature of the offense, conditions for release may include medical, psychological, or psychiatric treatment; counseling for alcohol or drug dependency; or electronic monitoring at no cost to the person. Secured bond may also be set as a condition of release.

According to the Judicial Conference of Ohio staff, requiring that conditions be justified in writing and that there be an inquiry into the ability to pay (described below) would affect the workload and related expenses of the courts and generally increase the time and effort for each case to be processed. The extent that additional time is needed for each case would be variable, as would the overall impact to each court depending on caseload.

### **Secured bond and ability to pay**

Under the bill, there is a presumption that any condition of release the court imposes must be nonmonetary. A court is only permitted to order that an accused person post a secured bond if there is clear and convincing evidence that the accused will not appear at a future date and time as required by the court. If the court intends to set a secured bond, the court is required to make an inquiry into the accused's ability to pay.

The maximum secured bond amount a court may set for an accused person is 25% of the total amount after the accused's total monthly expenses are deducted from the accused's total monthly income. The court is permitted to forfeit a monetary bond only because of the accused's failure to appear, and, if at any time within 90 days after the forfeiture the accused appears and provides satisfactory information to the court regarding the accused's failure to appear at the required hearing, the court must direct the forfeiture be discharged.

Under continuing law, a \$25 surcharge is paid by any person who posts bond. If the person is convicted, pleads guilty, or forfeits bond, this surcharge is forwarded to the Treasurer of State and credited to the Indigent Defense Support Fund (Fund 5DY0). The fund is used, in concert with other money appropriated for use by the Public Defender Commission, to reimburse counties for their costs in providing legal counsel to indigent persons in criminal and juvenile matters, and to fund operating expenses of the Commission. An increase in the number of accused persons arrested for whom conditions, rather than monetary bail, are imposed will result in a decrease in surcharge revenue credited to Fund 5DY0.

### **Mental health evaluation**

The bill modifies the existing law that requires the court to determine whether it will order an evaluation of the accused's mental condition before it sets bail in any case involving an allegation of menacing by stalking, or violating a protection order by also allowing the court to require the evaluation after it sets bail or conditions of release. If the court orders that a mental health evaluation be conducted before setting conditions of release, a conditions of release hearing must be scheduled after the submission of the mental health evaluation.

### **Detention hearing**

Under existing law, a judge is required to order that a person accused of certain crimes be detained until the conclusion of the hearing.<sup>1</sup> The bill instead broadens the list of offenses and gives the judge discretion to order that the accused be detained or released via a detention hearing process or to determine if the accused should be assigned conditions of release. The bill also requires a court of appeals to make judgment in an appeal of an order of the common pleas

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<sup>1</sup> Crimes include aggravated murder when it is not a capital offense, murder, a first or second degree felony, aggravated vehicular homicide, felony vehicular homicide, vehicular manslaughter, felony menacing by stalking, and felony operating a vehicle while impaired (OVI).

court denying bail within 15 calendar days, rather than requiring a court of appeals to decide the appeal expeditiously, as under current law.

By expanding the number of offenses that would qualify for a motion to hold a detention hearing, it is likely that more motions will be filed, adding administrative expenses for the courts, prosecuting attorneys' offices, and public defenders/appointed counsel. Because of the additional hearings, some accused persons will be denied bail or have more restrictive conditions of release ordered by the court.

## **Jail impact**

The bill's provisions are likely to result in some accused persons being released from jail sooner than otherwise might have been the case under current law and practice, and presumably produces a marginal savings in jail expenditures. The annual magnitude of this possible expenditure savings for any given county or municipal jail is indeterminate.

For comparative purposes, the Department of Rehabilitation and Correction (DRC) reported that the average cost of an inmate in Ohio's jails in calendar year (CY) 2020 was \$73.99 per bed per day for full-service jails and \$73.98 for 12-day facilities. For CY 2019, DRC reported that the daily statewide full-service jail population was 20,061, with 61.8%, or 12,401, of those inmates awaiting trial, and a daily statewide 12-day facility population at 167, with 89.8%, or 150, of those inmates awaiting trial.<sup>2</sup> Based on the above numbers, the average daily cost of pretrial incarceration (population x cost) is estimated at \$928,647 for a statewide annual cost of \$339.0 million (\$928,647 x 365 days).

## **Synopsis of Fiscal Effect Changes**

The substitute bill (I\_134\_1369-2) makes several procedural changes related to bail processes and guidelines that were set forth in the As Introduced version. The primary change in the fiscal effects from the As Introduced version compared to the substitute bill are those dealing with the timelines surrounding pretrial release and the proposed expansion of offenses for which a detention hearing may be held and possibly result in the denial of bail or more restrictive conditions of release. The substitute bill:

- Requires the court to make a preliminary pretrial release decision for the accused not later than 48 hours (rather than 24 hours in the prior version) after the accused's arrest;
- Requires that a condition of release hearing on a motion from the prosecutor or the court's own motion be held within 96 hours (rather than 48 hours in the prior version) of the accused's arrest if the accused is detained; and

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<sup>2</sup> Daily statewide jail population numbers are reported as a single day, June 30, of each year. Here, CY 2019 data is being used because CY 2020 data may be unreliable due to the COVID-19 epidemic.

- Requires that, on the motion of the prosecuting attorney or on the judge's own motion, the judge hold a detention hearing to determine whether the accused person is charged with certain offenses as listed in the bill (and as expanded in the substitute bill).<sup>3</sup>

The net effect of these changes will provide additional flexibility for the courts in scheduling hearings during normal business hours (rather than weekends). It is possible that certain court staff, prosecuting attorneys' offices, and public defenders/appointed counsel may still be required to schedule administrative tasks on an escalated period and adjust staff hours, but to a lesser degree than under the As Introduced version of the bill.

By expanding the number of offenses that would qualify for a motion to hold a detention hearing, it is likely that more motions will be filed, adding administrative expenses for the courts, prosecuting attorneys' offices, and public defenders/appointed counsel. Because of the additional hearings, some accused persons will be denied bail or have more restrictive conditions of release ordered by the court.

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<sup>3</sup> The As Introduced version of the bill requires detention hearings for the following offenses: aggravated murder when it is not a capital offense, murder, a first or second degree felony, aggravated vehicular homicide, felony vehicular homicide, felony menacing by stalking, felony domestic violence, felony violating a protection order, or felony operating a vehicle impaired. The substitute bill adds the following: involuntary manslaughter; aggravated vehicular assault; vehicular assault; aggravated assault; abduction; importuning; commercial exploitation of a minor; soliciting or providing support for an act of terrorism; making a terroristic threat; criminal possession of chemical, biological, radiological, or nuclear weapon or explosive device; burglary; theft; unlawful sexual conduct with a minor if the offender previously has been convicted of or pleaded guilty to rape, sexual battery, or unlawful sexual conduct with a minor; having weapons under a disability when it is a third degree felony; aggravated menacing or menacing by stalking when it is a fourth or fifth degree felony; an attempt to commit an offense when that attempt is a felony; reckless homicide; negligent homicide; unlawful termination of another's pregnancy; gross sexual imposition; terrorism; or complicity in committing any of the listed offenses.