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H.J.R. 2
134th General Assembly

Final Analysis

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Primary Sponsors: Reps. LaRe and Swearingen

Adopted: June 1, 2022; to be submitted to the voters on November 8, 2022; if approved, takes effect immediately

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SUMMARY

- Proposes to amend the Ohio Constitution to eliminate the requirement that the amount and conditions of bail be established pursuant to a specified provision of the Ohio Constitution (by the Ohio Supreme Court) and to instead require courts, when determining bail, to consider public safety, including the seriousness of the offense, and a person's criminal record, the likelihood a person will return to court, and any other factor the General Assembly may prescribe.

DETAILED ANALYSIS

Factors in setting bail

The resolution proposes to amend a provision of the Ohio Constitution to eliminate the requirement that the procedures for establishing the amount and conditions of bail be established pursuant to Article IV, Section 5(B) of the Ohio Constitution (see "**Background**," below) and to instead require courts, when determining the amount of bail, to consider public safety, including the seriousness of the offense, and a person's criminal record, the likelihood a person will return to court, and any other factor the General Assembly may prescribe.¹

Other parts of the Constitutional provision, unchanged by the resolution, specify that:²

- All persons must 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

¹ Ohio Constitution, Article I, Section 9.

² Ohio Constitution, Article I, Section 9.

person or to the community. 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 must not be required, excessive fines must not be imposed, and cruel and unusual punishments must not be inflicted.

2. The General Assembly must 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.

Election and effective date

The resolution specifies that the amendment proposal will be submitted to the electors at the general election to be held on November 8, 2022. If adopted by a majority of electors voting on it, the amendment takes effect immediately.³

Background

Article IV, Section 5(B) of the Ohio Constitution, in relevant part: (1) requires the Supreme Court to adopt rules governing practice and procedure in all Ohio courts, which rules may not abridge, enlarge, or modify any substantive right, (2) specifies procedures for the rules taking effect, and (3) specifies that all laws in conflict with the rules are of no further force or effect after the rules have taken effect.⁴ Pursuant to this mandate, the Court has adopted the Criminal Rules, one of which, Criminal Rule 46, governs pretrial release and detention of a criminal defendant.

HISTORY

Action	Date
Introduced	03-28-22
Reported, H. Criminal Justice	05-12-22
Adopted House (63-33)	05-25-22
Adopted Senate (25-7)	06-01-22

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³ Resolution – first paragraph and Effective Date paragraph.

⁴ Ohio Constitution, Article IV, Section 5(B).