



OHIO LEGISLATIVE SERVICE COMMISSION

Robert Meeker

Fiscal Note & Local Impact Statement

Bill: H.B. 439 of the 132nd G.A.
(L_132_0645-9)

Status: In House Criminal Justice

Sponsor: Reps. Dever and Ginter

Local Impact Statement Procedure Required: Yes

Subject: Pretrial detention and release

State Fiscal Highlights

- The one-time and annual costs that the Supreme Court, or any board, commission, or other state government entity designated by the Supreme Court will likely incur to first implement and then perform additional duties on a daily basis are indeterminate.
- There is likely to be some decrease in the amount of bail surcharge revenue credited annually to the Indigent Defense Support Fund (Fund 5DY0).

Local Fiscal Highlights

- Common pleas, municipal, and county courts generally will incur significant annual costs related to data collection, setting bail using a validated risk assessment tool, and additional hearing requirements. This is likely to include the need to hire additional staff.
- The bill's nonmonetary bail provision is likely to: (1) reduce the amount of bail money collected by the courts annually, and (2) reduce the jail stay of certain accused persons. The annual net of revenue reduction and jail expenditure savings is indeterminate.

Detailed Fiscal Analysis

Setting bail

The bill makes significant changes to the way bail is set in the state's criminal courts, including the elimination of the authority for bond schedules, the authorization to use nonmonetary bail, and a requirement that the courts use a validated risk assessment tool.

Nonmonetary bail

The bill permits courts to impose conditions instead of setting monetary bail. The bill requires judges, magistrates, and clerks to first consider setting conditions for bail before setting monetary bail.

Under current law, a \$25 surcharge is paid by any person who posts bail. If the person is convicted, pleads guilty, or forfeits bail, 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 up to 50% of their costs in providing legal counsel to indigent persons in criminal and juvenile matters, and to fund operating expenses of the Commission.

The bill specifies that this surcharge is not to be assessed to any person for whom nonmonetary bail is set. An increase in the number of individuals for whom conditions, rather than monetary bail, are imposed will result in a decrease in the amount of surcharges credited to Fund 5DY0.

Bond schedules and risk assessment tools

The bill eliminates the statutory authority for the use of predetermined schedules for fixing the amount of bail (bond schedules), and requires courts to use a validated risk assessment tool to assist in setting bail.¹ The results of the risk assessment are to be considered in addition to factors considered under current law and the likelihood that the accused would appear when required by the court, an additional factor added by the bill. The bill requires, in any case where a person is held in lieu of bail or bail is set using a schedule, that bail be set using a risk assessment tool as soon as possible.² Bail set using a risk assessment tool will supersede bail set by schedule.

Use of a risk assessment tool will create additional work for judges, magistrates, and clerks when setting bail, including setting bail for individuals detained after regular office hours. The increase in workload is uncertain, but expected to be significant and to potentially require additional staffing resources.

Hearing to deny bail

As a result of eliminating schedules, the bill requires a judge, on the motion of the prosecuting attorney or on the judge's own motion, to hold a hearing to determine whether a person charged with any felony should be denied bail. Under current law, the hearing is only required for certain offenses. The increase in workload is uncertain, but expected to be significant and to potentially require additional staffing resources for the courts, local prosecutors, and public defenders to accommodate potential additional hearings.

Jail expenditures

The bill's provision allowing nonmonetary bail to be set is likely to result in some accused persons being released from jail sooner than otherwise might have been the

¹ Juvenile courts are exempt from the requirement to consider results of a validated risk assessment tool in setting bail, but are not prohibited from doing so.

² The use of a bond schedule is permitted by the Ohio Rules of Criminal Procedure, Rule 46, Section G, unchanged by the bill.

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.

The Department of Rehabilitation and Correction (DRC) reports that the average cost of an inmate in Ohio's jails is \$64.45 per bed per day for full-service jails and \$76.53 for 12-day facilities.³ For calendar year (CY) 2016, DRC reports that the daily statewide full-service jail population was 19,209, with 57.9%, or 11,123, of those inmates awaiting trial, and a daily statewide 12-day facility population at 341, with 45.7%, or 156, of those inmates awaiting trial.⁴ Based on the above numbers, the average daily cost of pretrial incarceration (population x cost) is estimated at \$728,816 for a statewide annual cost of \$266 million ($\$728,816 \times 365$).

Local data collection

The bill requires every court, other than a juvenile court, to collect: (1) certain data related to bail and pretrial supervision, (2) certain information related to each criminal case handled by the court, and (3) any other information requested by the Supreme Court for the purpose of monitoring bail-setting procedures. The costs expected to result from the requirement to collect and report data could be significant. Depending on the current status of a court's data collection methods and tools, the additional expenses to individual courts may range from relatively minor to significant. For instance, some courts may only have to add fields to an existing database, while other courts will need to build a database and hire additional staff. The magnitude of the expense increases to the courts will be variable, but is likely that every court will see some increase in local expenditures to meet the data collection requirement.

Supreme Court

The bill requires the Supreme Court of Ohio, or any board, commission, or other state government entity designated by the Supreme Court, to support the use of risk assessment tools and the collection and reporting of data by: (1) creating a list of validated risk assessment tools that courts may use for the purpose of setting bail, (2) collecting and reporting specified information from every court, other than a juvenile court, (3) reporting the gathered information to the General Assembly once every other year (beginning 2018), and (4) maintaining a centralized database of sentence disposition information reported by the courts.

The one-time and annual costs that the Supreme Court or its designate will likely incur to first implement and then perform these additional duties on a daily basis will depend on the current capacity of the entity directed by the Supreme Court to carry out the bill's requirements.

³ These numbers are based on an average of the self-reported cost per bed provided to DRC by the jails; there is no statewide standard for what each jail may or may not include in these cost estimates.

⁴ These numbers are based on an average of the self-reported populations reported by the jails to DRC.

Additionally, the bill requests that the Supreme Court: (1) include a model judgement entry which includes entries for the findings of fact required for data collection to the Rules of Superintendence, and (2) promulgate a Rule of Superintendence regarding the procedure for setting bail when a judge, magistrate, or clerk of the court is not readily available to set bail within a 72-hour period.

Synopsis of Fiscal Effect Changes

From a fiscal perspective, there are three substantive differences (summarized below) between the As Introduced version of the bill and the substitute version (L_132_0645-9).

- The As Introduced version of the bill required the Ohio Criminal Sentencing Commission to take actions related to the selection of risk assessment tools and data collection.⁵ The substitute version of the bill transfers these requirements and related costs to the Supreme Court of Ohio, or any board, commission, or other state government entity designated by the Supreme Court.
- The As Introduced version of the bill required all courts, including juvenile courts, to collect and report data, and to use a validated risk assessment tool when setting bail. The substitute version of the bill exempts the juvenile courts from these requirements.
- The As Introduced version of the bill prohibited a judge, magistrate, or clerk from requiring monetary security as bail if the amount of the security is designed to keep the accused detained. The substitute version of the bill eliminates this prohibition. Other provisions of the bill, unchanged by the substitute version, will reduce the amount of bail money collected by the courts annually. The elimination of this prohibition may lessen the annual revenue reduction.

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⁵ The Ohio Criminal Sentencing Commission is an affiliated office of the Supreme Court of Ohio.