



# THE BUCKEYE INSTITUTE

## The Buckeye Institute Policy Brief

### The Ohio Model for Bail Reform: Retaining Local Flexibility and Saving Money

By Daniel J. Dew

Cash controls Ohio's current pretrial detention-or-release system. Unfortunately, and with few exceptions, those with cash are released until trial, while those without cash will wait in jail. This system yields absurd results as drunken jaywalkers sit in jail even as child rapists walk free.<sup>1</sup> Such results demand reform.

Some Ohio policymakers recognize that the current cash-centric system must be replaced with a proven, risk-based system and have introduced legislation in the General Assembly that moves in that direction.<sup>2</sup> The proposed reforms would give Ohio judges verified risk-assessment tools to calculate a risk score for each defendant. The individualized risk metric derives from objective criteria such as the defendant's criminal history, past failures to appear in court, and whether the defendant is charged with a violent offense. Using objective risk scores, a judge then has discretion to hold the defendant in jail, to impose conditions of release, or to let the defendant go home to await trial.

Verified risk-assessment tools are being used across the country, including here in Ohio, with promising results. In San Francisco, for example, courts have used risk-assessment tools to cut the failure-to-appear rate to 20 percent, and have reduced the percentage of defendants who committed crimes while awaiting trial to six percent.<sup>3</sup> Lucas County, Ohio has also utilized new risk-assessment tools and is now releasing more defendants pending trial, while simultaneously seeing more defendants appear for court. And the crime committed by defendants awaiting trial in Lucas County has been cut in half.<sup>4</sup>

Not only have risk-assessment tools yielded better pretrial outcomes, but they also tend to save taxpayer dollars when implemented effectively. States and local jurisdictions that have transitioned from cash-based pretrial systems to risk-assessment systems quickly discovered that they had been detaining too many low-level offenders under the former system. Using verified risk-assessment tools has helped reduce jail populations in states like New Jersey, for example, which has credited

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<sup>1</sup> Daniel J. Dew, *"Money Bail" Making Ohio a More Dangerous Place to Live*, The Buckeye Institute, December 11, 2017.

<sup>2</sup> **House Bill 439**, 132<sup>nd</sup> General Assembly (Ohio 2017); **Senate Bill 274**, 132<sup>nd</sup> General Assembly (Ohio 2018).

<sup>3</sup> **Public Safety Assessment Tool**, City and County of San Francisco District Attorney (last visited April 20, 2018).

<sup>4</sup> **New data: Pretrial Risk Assessment Tool Works to Reduce Crime, Increase Court Appearances**, Laura and John Arnold Foundation press release, August 8, 2016.

statewide bail reforms for reducing its jail population by 20 percent.<sup>5</sup> Reducing inmates reduces costs. Ohio pays an average of \$64.45 per day to keep a defendant in jail while he awaits trial.<sup>6</sup> The proposed reforms could help reduce Ohio's number of incarcerated pretrial defendants and save communities an estimated \$67 million in jail costs.<sup>7</sup>

The proposed reforms under consideration in the Ohio General Assembly give local jurisdictions more flexibility to implement changes and find cost savings than any other statewide bail reform initiative in the country.<sup>8</sup>

### **The Ohio Proposal for Bail Reform**

The Ohio General Assembly is currently considering proposed bail reform measures that would do several simple things.<sup>9</sup> First, the proposal would adopt verified risk-assessment tools to give judges more information for determining each defendant's risk of flight and of committing new crimes while awaiting trial. Second, the proposed reforms would give judges more pretrial discretion. Under current Ohio law, only a defendant accused of certain serious crimes may be denied pretrial release. The reform proposal would expand judicial discretion by allowing judges to detain any defendant accused of a felony if the judge determines that the defendant poses a threat to the community. Third, the proposal would instruct judges to consider non-financial terms of release before resorting to money-bail. Finally, the reform measures include provisions for collecting relevant data in order to assess and ensure that the new policies are achieving the intended results.

Because each jurisdiction has different needs and available resources, the Ohio proposal gives county and municipal courts flexibility to implement reform. For example, local jurisdictions could choose whether to create or continue pre-existing pretrial services or to incorporate pretrial functions (e.g., monitoring defendants and administering risk assessments) into existing agencies that already perform similar duties. Ohio's proposal also gives local jurisdictions the flexibility to continue using bail schedules for misdemeanors when a court officer is unavailable to use the prescribed risk-assessment tool.

### **Taxpayer Savings**

Ohio's proposed statewide bail reform could provide substantial savings for taxpayers. It is expensive to keep a person in jail. Pretrial detention costs approximately \$14 billion per year in the United States.<sup>10</sup> In 2013, Ohio's Cuyahoga County alone spent \$42 million jailing pretrial

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<sup>5</sup> Peter Krouse, **New Jersey claims bail-reform a success, cites huge drop in jail population**, Cleveland.com, February 13, 2018.

<sup>6</sup> **House Bill 439 of the 132nd General Assembly Fiscal Note & Local Impact Statement**, Ohio Legislative Service Commission, March 20, 2018.

<sup>7</sup> **The Facts: A Cost Savings Analysis of Bail Reform**, The Buckeye Institute, March 2018.

<sup>8</sup> For example, Kentucky and New Jersey have both implemented state-level bail reforms using statewide pretrial services. See **Pretrial Services**, Kentucky Court of Justice; **Criminal Justice Reform Report to the Governor and the Legislature for Calendar Year 2017**, New Jersey Judiciary.

<sup>9</sup> **House Bill 439**, 132<sup>nd</sup> General Assembly (Ohio 2017); **Senate Bill 274**, 132<sup>nd</sup> General Assembly (Ohio 2018).

<sup>10</sup> **Pretrial Justice: How Much Does it Cost?**, Pretrial Justice Institute, January 1, 2017.

defendants.<sup>11</sup> In Ohio, jail is far more expensive than supervised release, with the average jail bed costing almost \$65 per day,<sup>12</sup> compared to an affordable \$5 per day for supervised release.<sup>13</sup>

Summit County has already implemented several verified risk-assessment tools that have yielded significant savings. The county estimates that it saved \$7.3 million in one year by adopting a pretrial risk-assessment tool and relying less on the money-bail system.<sup>14</sup> Even accounting for its relatively large pretrial population and high daily-jail-bed cost, Summit County's early results suggest that pretrial reforms could provide substantial cost-savings across the rest of the state.

The estimated statewide savings from the proposed reforms and reduced jail population is more than \$67 million annually.<sup>15</sup> Those savings should more than cover the cost of implementing the reforms.

### **Cost of Ohio's Reform Proposal: Not What the Critics Claim**

Bail reform opponents argue that reforming the current cash-bail system will be too expensive.<sup>16</sup> They cite reforms implemented in New Jersey<sup>17</sup> as evidence of exorbitant reform costs, but Ohio is not considering New Jersey-style reforms. New Jersey created a statewide pretrial services agency required to be available every hour of every day. Ohio's proposal does no such thing. Instead, Ohio's reforms would offer judges a suite of risk-assessment tools to maximize judicial and local flexibility to meet the needs of each jurisdiction. Because reform implementation would remain with local jurisdictions, the exact costs are difficult to estimate, but should not – if managed properly – rise anywhere near New Jersey-like levels.

Three common expenses that the Ohio reforms can be expected to impose will likely include the costs of conducting risk-assessments, monitoring defendants on conditional release, and apprehending defendants who fail to appear for trial. Contrary to critics' claims, however, none of these tasks are likely to cost taxpayers more under the reform proposal than they do already under the status quo cash-bail system.

First, the time – and therefore the money – needed to perform a risk-assessment will vary depending on the selected tool. For example, the Ohio Risk Assessment System Pretrial Tool collects a raft of subjective data and requires a time-intensive, in-person interview.<sup>18</sup> By contrast, Lucas County's less expensive Public Safety Assessment (PSA) uses nine objective factors that

<sup>11</sup> Sara Dorn, **Bail Reform Could Save U.S. Taxpayers \$78 Billion, Study Says**, Cleveland.com, January 31, 2017.

<sup>12</sup> **House Bill 439 of the 132nd General Assembly Fiscal Note & Local Impact Statement**, Ohio Legislative Service Commission, March 20, 2018.

<sup>13</sup> **Ad Hoc Committee on Bail and Pretrial Services: Report and Recommendations**, Ohio Criminal Sentencing Commission, March 2017.

<sup>14</sup> Peter Krouse, **Cuyahoga County task force seeks sweeping bail reforms**, Cleveland.com, March 16, 2018.

<sup>15</sup> **The Facts: A Cost Savings Analysis of Bail Reform**, The Buckeye Institute, 2018.

<sup>16</sup> Laura A. Bischoff, **Bondsmen oppose effort to move Ohio away from cash bail system**, *Dayton Daily News*, March 21, 2018.

<sup>17</sup> S.P. Sullivan, **The good news: N.J. bail overhaul is working. The bad news: It's already going broke.**, NJ.com, February 12, 2018.

<sup>18</sup> Edward Latessa, Paula Smith, Richard Lemke, Matthew Makarios, and Christopher Lowenkamp, **Creation and Validation of the Ohio Risk Assessment: Final Report**, July 2009.

do not require in-person interviews. Ohio's reform proposal gives local jurisdictions flexibility to choose the cost-effective tools that are affordable and right for them.

Second, jurisdictions that choose to release more defendants pending trial can expect increased monitoring costs, but those costs will be more than offset by the money saved not incarcerating those defendants. Monitoring is much cheaper than jailing. As noted, the average Ohio jail bed at nearly \$65 per day<sup>19</sup> is 13 times cheaper than the roughly \$5 per day for supervised release.<sup>20</sup> Many Ohio courts already monitor supervised release, and under the reform proposals more jurisdictions will have greater flexibility to work with local probation offices to provide those services.

Finally, critics' concerns that bail reform will overwhelm local law enforcement with tracking down delinquent defendants ignore the reality of the broken cash bail system. In theory, under the status quo system, bail agents – not law enforcement officers – are responsible for finding and returning their bond-jumpers to court. In fact, however, law enforcement officials in many communities already do the bail agents' job for them. A recent study in Utah found that runaway defendants are usually returned to custody within three months as a result of a traffic stop or some other interaction with law enforcement.<sup>21</sup> Thus, jurisdictions are already paying law enforcement to apprehend delinquent defendants, and any costs associated with proposed reforms that will require local law enforcement to perform more of those duties will likely be minimal.

## Conclusion

Ohio's cash-based pretrial release-and-detain system is broken. Reform-minded policymakers have wisely introduced an alternative risk-assessment approach that will give local judges and jurisdictions flexibility to address costs and public safety concerns as they see fit. Critics of the much-needed bail reform have misrepresented facts and made misleading comparisons in their effort to protect the failed status quo.

The bail reform proposals pending in the General Assembly will reduce the number of low-level offenders sitting in expensive jail cells awaiting trial, thus saving the state and local jurisdictions hard-earned taxpayer dollars. Even setting aside important issues of justice, fairness, and public safety that have all been compromised by the money-bail system, fiscal responsibility and cost-savings alone are enough to justify Ohio's proposed bail reform initiative.

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<sup>19</sup> **House Bill 439 of the 132nd General Assembly Fiscal Note & Local Impact Statement**, Ohio Legislative Service Commission, March 20, 2018.

<sup>20</sup> **Ad Hoc Committee on Bail and Pretrial Services: Report and Recommendations**, Ohio Criminal Sentencing Commission, March 2017.

<sup>21</sup> **A Performance Audit of Utah's Monetary Bail System**, Office of the Legislative Auditor General, State of Utah, January 26, 2017, p. 36.

## About the Author



Daniel J. Dew is the legal fellow at The Buckeye Institute’s Legal Center. In this capacity, Dew focuses on legal policies that promote freedom and the public good.

An expert on criminal justice reform, Dew has worked on policies that increase Ohioans’ safety, makes the criminal justice system fairer, and saves taxpayer dollars. Dew was a leading voice in reforming Ohio’s civil asset forfeiture policies and worked closely with Ohio’s Criminal Justice Recodification Committee on developing proposals to reform the state’s criminal code.

Dew currently serves on the Ohio Justice Reinvestment Initiative Ad Hoc Committee, which brings together legislators, judges, prosecutors, prison officials, defense lawyers, and criminal justice experts to find ways Ohio can safely reduce its prison population.

Prior to his position at Buckeye, Dew was a visiting legal fellow at the Heritage Foundation’s Edwin Meese III Center for Legal and Judicial Studies and an associate attorney at Ford, Gold, Kooor & Simon. He also represented energy companies in contract negotiations.

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