



THE BUCKEYE INSTITUTE

Public Comments on Proposed Criminal Rule 46

Submitted to The Ohio Supreme Court

Daniel J. Dew, Legal Fellow
The Buckeye Institute

January 2, 2020

The proposed changes to Criminal Rule 46 substantially improve the existing rule and address many concerns regarding Ohio's current system of pretrial detention and release. Thank you for clarifying the apparent contradiction between Proposed 46(B) and Proposed 46(B)(1) as we had suggested during the previous round of public comments.

The Buckeye Institute has long advocated pretrial reforms to promote public fairness and safety, and we commend the Commission on the Rules of Practice and Procedure for its great work on this issue. Pursuant to The Supreme Court of Ohio's request for comments, The Buckeye Institute respectfully suggests the following additional revisions to further the commission's stated goals.

1. State that personal recognizance is the presumptive method of release.

Proposed Rule 46(B) should explicitly state that personal recognizance is the default method of release. With personal liberty at stake, the government should have the burden to demonstrate that a financial condition is necessary to provide reasonable assurance of appearance. The proposed rule rightly states that the court should release a person on the least restrictive conditions. To solidify that policy, the rule should state expressly that release on personal recognizance is the presumptive release method. The court may then use the factors provided in proposed Rule 46(C) to determine whether to deviate from the default.

2. The end of proposed Rule 46(B)(2) should state that a person will not be required to pay for any non-financial condition of release. If a person is required to pay for non-financial conditions of release, like drug testing or electronic monitoring, the person may be detained for not having access to cash.

Proposed Rule 46(B) states that financial conditions may be used only to address concerns about appearance in court. But if a defendant must pay for non-financial conditions, then they effectively become financial conditions that may financially harm defendants or their families, or needlessly keep people in jail.

3. Proposed Rule 46(C) should require the court to consider the accused's financial capacity to pay as a factor in setting monetary bail.

A financial condition gives defendants an incentive to appear for their court dates. A financial-capacity-to-pay provision would help ensure that defendants are not detained simply because they cannot afford a financial condition. Without a required capacity-to-pay hearing, financial conditions may go beyond their limited, intended purpose and become unintentionally punitive.

4. Proposed Rule 46(G) should be amended to state that recognizance bonds are the default under any bond schedule.

Bond schedules only apply to misdemeanors and, as such, the bond schedule default should be personal recognizance unless the defendant has previously failed to appear in that case. Bail schedules in which personal recognizance is not the default release method may create the

untenable situation in which felonies enjoy a presumption of recognizance, but misdemeanors do not.



About The Buckeye Institute

Founded in 1989, The Buckeye Institute is an independent research and educational institution – a think tank – whose mission is to advance free-market public policy in the states.

The Buckeye Institute is a non-partisan, non-profit, and tax-exempt organization, as defined by section 501(c)(3) of the Internal Revenue code. As such, it relies on support from individuals, corporations, and foundations that share a commitment to individual liberty, free enterprise, personal responsibility, and limited government. The Buckeye Institute does not seek or accept government funding.

