



THE BUCKEYE INSTITUTE

Interested Party Testimony Before the Ohio House Criminal Justice Committee on House Bill 439

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Chairman Manning, Vice Chairman Rezabek, Ranking Member Celebrezze, and members of the Committee, thank you for the opportunity to speak about the important pretrial detention reform policies found in House Bill 439. My name is Daniel Dew and I am a legal fellow at **The Buckeye Institute**, a free-market think tank here in Columbus.

As I outlined in my report, *“Money Bail”: Making Ohio a More Dangerous Place to Live*, The traditional cash bail system allows accused murderers, child rapists, armed robbers, and dangerous gang members to be arrested and released into our communities to await trial. Meanwhile, otherwise law-abiding, harmless citizens sit in jail for days, weeks, or even months before trial for drunken jaywalking, violating dress-codes, or failing to pay traffic tickets. These absurd incongruities stem from a pretrial release system rooted in money rather than a careful, scientific assessment of the risks that the accused pose to our neighborhoods.

Pretrial detention is an unfortunate, but necessary aspect of the criminal justice system.

During the time between arrest and trial, the defendant enjoys the presumption of innocence, having not yet been convicted of a crime. But those accused of crimes have some incentive to avoid standing trial and, if released, may flee the jurisdiction and never appear in court to face the proverbial music. Moreover, dangerous defendants may even commit more crimes while awaiting trial. Thus, the United States Supreme Court has recognized that the state’s interest in the public’s safety may allow the accused to be detained before and during trial.¹ The Court emphasized that such pretrial detention must be a regulatory measure to ensure public safety and the accused’s appearance for trial.² If pretrial detainment is used to punish the accused, observed the Court, it is an unconstitutional violation of the right to due process of law.³

How pretrial detention decisions are made is left to the state. The goal of a pretrial system should be to release as many defendants as safely possible before trial, and for defendants to show up for court.

Actuarial risk-assessment tools, like the Public Safety Assessment developed by the **Laura and John Arnold Foundation**, have helped forge remarkable results in pretrial detention. Since switching to an evidence-based, risk-assessment system, Lucas County, Ohio, for example, has seen more defendants released before trial, more defendants appearing for trial, and less crime committed by those awaiting trial.⁴ Crime committed by those on release, for instance, dropped from 20 percent to 10 percent.⁵ Those skipping their court date dropped by 12 percent, even as the number of people released without money bail doubled.

The Lucas County results are no fluke. San Francisco, currently using a similar risk-assessment tool, has seen its crime rate by those awaiting trial slashed in half,⁶ and New Jersey, after

¹ *U.S. v. Salerno*, 481 U.S. 739, 748, 1987.

² *Id.*

³ *Id.*

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

⁵ *Id.*

⁶ Marisa Lagos, **Bail or Jail? Tool Used by San Francisco Courts Shows Promising Results**, KQED News, September 27, 2017.

implementing statewide reforms this year, has witnessed an overall 17 percent drop in violent crime, and a 27 percent drop in murders.⁷

There will be opposition to these policies from the bail bond industry. Bail bonds support a \$2 billion per year industry.⁸ When a defendant cannot afford set bail, a bond agent may deposit a surety bond with the court on the defendant's behalf. In most states, including Ohio, the law requires that bail companies charge the accused a non-refundable 10 percent of the bail.⁹

Typically, bail agents perform rather routine tasks to ensure that those free on bail appear in court at the required time. Agents, for example, often call or text their clients to remind them of court dates¹⁰ and get the accused's family members involved to ensure compliance with the court's orders.¹¹

Less frequently, bail agents will attempt to recover or apprehend fugitives who have skipped-out on the court's orders and fled. Regrettably, if predictably, fugitive recovery efforts performed by bail agents or bounty hunters instead of trained law enforcement officers do not always end well.

In April 2017, bounty hunters in Tennessee killed an innocent man while trying to return a fugitive.¹² Then in June, three people were killed during a 20-round shootout between a fugitive and Texas bounty hunters.¹³ And in Cleveland, Ohio, two bounty hunters were shot while attempting a fugitive recovery.¹⁴ Such tragic incidents are recent reminders that state law should not create incentives for civilians with 20 hours of classroom training to perform dangerous law enforcement functions that put them, the fugitive, and the public at risk.

In conclusion, pretrial decisions should be based on risk, not the size of the defendant's wallet. As experience has shown, money deposited with the court or with a bail agent does not make a person less dangerous. Policies like those found in House Bill 439 would make our system fairer and our communities safer.

Thank you for the opportunity to testify today.

⁷ Michael Symons, **Christie on Dog the Bounty Hunter Bail Reform Lawsuit: Bring it on**, New Jersey 101.5, August 2, 2017.

⁸ Gillian B. White, **Who Really Makes Money Off of Bail Bonds**, *The Atlantic*, May 12, 2017.

⁹ Ohio Rev. Code Ann § 3905.92(D).

¹⁰ See Mark Heffernan, **Texting Defendants Court Date Notifications: A great practice that makes a lot of sense – when it's done by private bail agents rather than inept, unaccountable government workers**, BailBondsman.com, October 5, 2016.

¹¹ **Bail Reform**, bailreform.us, (Last visited October 3, 2017).

¹² Matthew Haag, **On Trail of Suspect, Bounty Hunters Killed an Innocent Man**, *The New York Times*, May 3, 2017.

¹³ Christine Hauser, **Texas Bounty Hunter Shootout Kills 3, Raising Questions**, *The New York Times*, June 1, 2017.

¹⁴ Donna J. Miller, **2 Bounty Hunters Shot Trying to Arrest Cleveland Man**, Cleveland.com, May 22, 2017.