

### Justice Reform

## Bail reform will make Ohioans healthier

**Samuel Johnson, Tanisha Pruitt, Ph.D. and Piet van Lier**

All Ohioans deserve a criminal legal system that treats everyone fairly, no matter our income, race or gender. But many Ohioans are in jail before their trials because they cannot afford to buy their freedom. On any given day, as many as 12,600 Ohioans are incarcerated as they await trial,<sup>1</sup> compared to 3,000 in 1978 — driven mostly by bail set by local courts. Although overall crime rates have fallen,<sup>2</sup> people in jail pretrial often outnumber those who have been convicted.<sup>3</sup>

Cash bail is a secured promise requiring payment before someone can be released from jail. This system allows people to pay for their release to await trial, but leaves those who cannot pay in jail for days, weeks or months, creating disparities along race and class lines. National research has shown that 90% of people in jail pretrial are there because they cannot afford bail,<sup>4</sup> though it does little to ensure people appear in court. Courts are more likely to jail Black people pretrial than similarly charged white people<sup>5</sup> and less likely to release Black people without requiring they pay bail.<sup>6</sup> Black people are also more likely to face discrimination that makes it harder for them to secure legal representation.<sup>7</sup>

Two pieces of bipartisan state legislation, House Bill 315 and Senate Bill 182, would largely eliminate cash bail. The bills would require courts make a preliminary release decision within 24 hours of an arrest. If a judge or prosecutor believes a person poses a specific threat, a hearing would be required within 48 hours to 72 hours.<sup>8</sup>

### Bail reform can improve health outcomes

Our research review strongly suggests that the presumption for release contained in these bills would improve Ohioans' health by reducing the likelihood that people accused of crimes lose their jobs, housing or custody of children and lessening damage to the health of those who otherwise would be held while awaiting trial.<sup>9</sup> The bills hold judges accountable by requiring them to provide written explanations when they release people conditionally.

### Mental health

Pretrial incarceration increases stress and can degrade the mental health of individuals who are detained.<sup>10</sup> Suicide is the leading cause of fatalities in jails, where the death rate has grown over the past two decades.<sup>11</sup> Many people in jails need mental and physical health care, but jails typically lack the ability to provide adequate treatment.<sup>12</sup>

<sup>1</sup> American Civil Liberties Union of Ohio. "Ohio could save big by implementing bail reform: A fiscal impact analysis," September 2020. <https://bit.ly/2Xyup04>.  
<sup>2</sup> Gramlich, John, Pew Research Center. "What the data says (and doesn't say) about crime in the United States, Nov. 20, 2020. <https://pewrsr.ch/3tJDiDT>.  
Murder rates, however, increased in 2020 and 2021 across the country, including in Cleveland. See Scofield, Drew, News 5 Cleveland. "Cleveland's year-to-date homicide numbers are highest in a more than a decade," August 15, 2021. <https://bit.ly/3ofskYl>.  
<sup>3</sup> Aiken, Joshua, Prison Policy Initiative. "Era of Mass Expansion: Why State Officials Should Fight Jail Growth," May 31, 2017. <https://bit.ly/3zxrEK9>.  
<sup>4</sup> Human Impact Partners. "Liberating Our Health: Ending the Harms of Pretrial Incarceration and Money Bail." Oakland, CA: February 2020.  
<sup>5</sup> Public Performance Partners Inc. "Franklin County Ohio Bail Practices Review," December 21, 2018. <https://bit.ly/3AEyHBJ>.  
<sup>6</sup> Ibid.  
<sup>7</sup> Libgoder, Brian. "Getting a lawyer while Black: a field experiment." Lewis and Clark Law Review [Vol 24:1 2020], <https://bit.ly/3FG8IBZ>.  
<sup>8</sup> Text and analysis available at <https://bit.ly/2X8i5Um> (HB 315) and <https://bit.ly/3k03cMa> (SB 182).  
<sup>9</sup> Dobbie, Will and Crystal Yang. "Proposals for Improving the U.S. Pre-Trial System." The Brookings Institute/The Hamilton Project. (2019). <https://brookgs/3kqQ0oK>.  
<sup>10</sup> Human Impact Partners, 2020.  
<sup>11</sup> Wang, Leah. "Rise in jail deaths is especially troubling as jail populations become more rural and more female," Prison Policy Initiative, June 23, 2021. <https://bit.ly/3kziibS>.  
<sup>12</sup> Peterson, Nick. "Do Detainees plead guilty faster? A Survival Analysis of Pre-Trial Detention and the Timing of Guilty Pleas." Criminal Justice Policy Review 31, No. 7 (2020): 1015-1035. DOI: 10.1177/0887403419838020 journals.sagepub.com/home/cjp.

## Physical health

Because the criminal legal system rapidly cycles people in and out of jails there is little time to screen and treat them for illnesses like HIV and tuberculosis.<sup>13</sup> All incarcerated people are at risk of being victims of violence while in jail, especially trans people who are 10 times more likely to be victims of violence.<sup>14</sup> Early in the pandemic, high turnover rates turned jails into incubators for COVID-19, fueling the virus's spread in the general population.<sup>15</sup>

## Children and families

Family members of incarcerated people are often considered “hidden victims” of the criminal legal system. These impacts ripple throughout the community, into schools, neighborhoods, and workplaces, and high levels of stress and anxiety for children of people detained can have negative effects into adulthood.

## Effects on women

Because they are generally paid lower wages<sup>16</sup> and less likely to be part of the formal labor force, they often have more trouble affording bail.<sup>17</sup> Yet women often shoulder costs like bail, attorney fees, and court fines.<sup>18</sup> Pretrial incarceration can worsen already strained finances and support systems of single mothers,<sup>19</sup> while those detained are more likely to lose children to foster care than women with children in foster care who are not detained.<sup>20</sup>

## The LGBTQ+ community

Nearly one in six transgender people has been incarcerated, including half of Black transgender people.<sup>21</sup> Courts often impose higher bail amounts on LGBTQ+ individuals because they are stereotyped as greater flight risks and more dangerous.<sup>22</sup>

## People who use drugs

Nationally, 63% of people serving sentences in jails were identified as having substance abuse disorder.<sup>23</sup> Since 2000, 381% more people have died from drugs or alcohol in jail.<sup>24</sup> Research shows a connection between increases in local jail admission rates and fatal overdose rates.<sup>25</sup>

## Recommendations and conclusion

HB 315 and SB 182 would reduce racial inequality in the criminal legal system, decrease the toll of incarceration, protect people from the spread of disease and threats to their physical safety, and shield children from the often life-derailing trauma of having a parent detained. The bills would also reduce violence toward incarcerated members of the LGBTQ+ community and overdose rates among those using illegal drugs, while improving treatment.

As introduced, HB 315 and SB 182 mandate a clear presumption for release without relying on risk assessments and onerous pretrial supervision. Release without undue conditions must stay in these bills if they are to achieve expected goals. These bills, if passed into law, would free thousands of Ohioans from the trap of the current bail system and take significant steps toward a more humane, just and equitable criminal legal system.

---

<sup>13</sup> Wakefield, Sara and Lars Højsgaard Andersen. “Pretrial Detention and the Costs of System Overreach for Employment and Life.” The Rockwool Foundation Research Unit study paper 152 (June 2020). <https://bit.ly/3iXGww4>.

<sup>14</sup> American Public Health Association. “Advancing Public Health Interventions to Address the Harms of the Carceral System,” October 24, 2020. <https://bit.ly/2WfirV6>.

<sup>15</sup> “New Study Finds Crowded Jails Seeded Millions of Covid-19 Cases.” Equal Justice Initiative, September 8, 2021. <https://tinyurl.com/wwudxvysx>.

<sup>16</sup> U.S. Bureau of Labor Statistics. Women’s Labor Force Participation data retrieved at <https://bit.ly/30mRpAn>; men’s at <https://bit.ly/3v3E3sO>.

<sup>17</sup> Digard, Léon and Elizabeth Swavola. “Justice Denied: The Harmful and Lasting Effects of Pretrial Detention.” Vera Institute of Justice, 2019.

<sup>18</sup> <https://bit.ly/3CCKBLNa>.

<sup>19</sup> Ibid.

<sup>20</sup> Swavola, Elizabeth, Kristine Riley and Ram Subramanian, Vera Institute of Justice. “Overlooked: Women and Jails in an Era of Reform,” Aug. 15, 2016.

<sup>21</sup> <https://bit.ly/3hHIU9Q>.

<sup>22</sup> Digard and Swavola 2019.

<sup>23</sup> Lambda Legal, Transgender Incarcerated People in Crisis. <https://bit.ly/3tNMmDA>.

<sup>24</sup> Hanley, Tyrone, and Monica James. “The Impact of Cash Bail on LGBTQ people and people living with HIV.” National Center for Lesbian Rights and Black and Pink (2021). <https://bit.ly/3ENLN1Q>.

<sup>25</sup> Vera Institute of Justice, Overdose Deaths and Jail Incarceration. <https://bit.ly/39dh13Z>.

<sup>26</sup> Wang, Leah. “Rise in jail deaths is especially troubling as jail populations become more rural and more female,” Prison Policy Initiative, June 23, 2021.

<sup>27</sup> <https://bit.ly/3kziib5>.

<sup>28</sup> Galvin, Gaby. US News and World Report. “Incarceration Helped Fuel America’s Opioid Crisis, Study Suggests,” July 3, 2019. <https://bit.ly/3hEikqD>.