

Is Bail Reform Right for Ohio?

Table of Contents

1. Public Safety
2. Lack of Data
3. Warning Signs
4. Cost
5. Racial Bias
6. Concerns
7. Letters from previous Rule Change

Public Safety

Recent News! February 20, 2019 - Tuscarawas County Sheriff's Office

- A felony warrant has been issued by the Tuscarawas County Common Pleas Court for Ian A. Cultrona. Cultrona was charged with **Attempted Murder, Aggravated Robbery with Firearm specification, Felonious Assault and Conspiracy** from an incident that occurred outside of Newcomerstown in December of 2018
- On January 29, 2019 Cultrona was arraigned in the Tuscarawas County Common Pleas Court and released on a **Personal Recognizance** bond after having a **GPS device** attached to his ankle. **Cultrona has since removed the GPS device and his whereabouts are currently unknown.**

-Where is the accountability for public safety here? With the fast track of this reform we may find ourselves too quickly jeopardizing the lives of our very own local communities

Columbus Dispatch – Unserved Justice

-How can law enforcement be expected to keep up with numbers like these? If defendants would have been released on a surety bond there would have been an extra layer of protection. Law enforcement would not be the only industry tasked with re-arresting these dangerous defendants. Law enforcement arrest = cost to the taxpayer for doing a job a second time; bond with Surety attached= zero dollars passed off to the taxpayers.

3,000

OPEN WARRANTS IN FRANKLIN COUNTY INVOLVING VIOLENT CRIMES AND WEAPONS
AS OF SPRING 2018

2,300

WERE FOR DOMESTIC VIOLENCE OR ASSAULT

139

WERE FOR RAPE AND SEXUAL ASSAULTS

16

WERE FOR MURDERS

Toledo Blade – Bail or jail

- “They fear that victims will hesitate to bring charges if they know their assailant will likely be immediately set free, and that criminals will lose their fear of being arrested if they think the system prefers to release them with no bail and no jail.”



-Have we forgot about the victim?

Bail battle: Greece Police chief warns over proposed bail reform

- GREECE, N.Y. (WHEC) -- Greece Police Chief Patrick Phelan offered a stark warning over the state's proposed measure to eliminate cash bail for many crimes.

"We're getting to the point in New York state where you're seriously limiting our ability to keep you safe," Phelan declared.

- In a tweet Friday afternoon, Phelan announced: "Here are **SOME** crimes that the defendant will be automatically released without bail; **Robbery 2nd, Burglary 2nd, Assault 2nd, Stalking 1st, Strangulation 2nd, Rape 2nd, Sexual Abuse 1st, course of sexual conduct against a Child...**"

All crimes of which include a victim, why do we continuously enable the criminal... it can only get worse from here

Lack of Data

Prosecutors: Criminal justice reform should not threaten safety of witnesses and victims

- ALBANY – New York lawmakers are grappling with a number of criminal justice reforms right now. However, prosecutors are concerned that legislation could threaten the safety of witnesses and victims.
- "Especially in this particular term, everything is being fast-tracked and so it forces all of these discussions to be had in such an unreasonable period of time," said Soares. "And ultimately results can be something that we don't want. When I say we don't want, I mean society doesn't want."

-We didn't get here in a day, Why do we need to solve this problem in a day

CCCP 2016 Annual report

ARRAIGNMENT DATA

* Capias as % of Scheduled Bails 34.6%

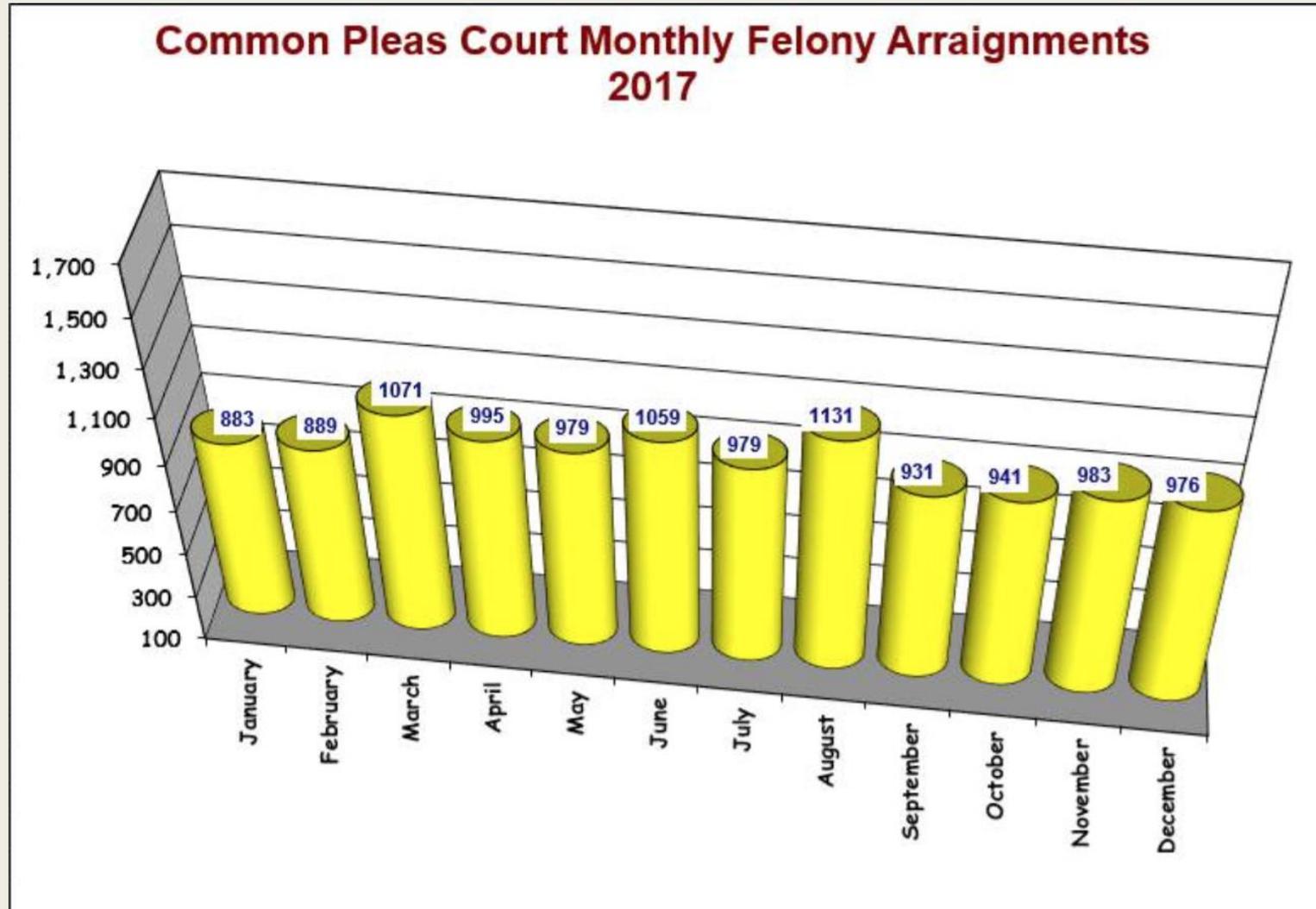
2016	JAN	FEB	MARCH	APRIL	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	YTD TOTAL
Female Jails	35	43	60	52	35	56	50	68	67	43	57	33	599
Male Jails	428	443	573	521	454	515	409	581	433	447	446	482	5732
Total Scheduled Jails	463	486	633	573	489	571	459	649	500	490	503	515	6331
Total Scheduled	606	764	1039	676	655	749	637	795	624	785	780	836	8946
Total Scheduled	1069	1250	1672	1249	1144	1320	1096	1444	1124	1275	1283	1351	15277
Jails Arraigned	434	446	559	527	432	514	428	583	478	464	480	497	5842
Bails Arraigned	385	440	571	393	410	415	384	485	351	465	434	483	5216
Total Arraigned	819	886	1130	920	842	929	812	1068	829	929	914	980	11058
Total Cont.	76	91	137	98	86	106	72	113	88	88	86	86	1127

CCCP 2016 Annual report

- Cuyahoga County Court of Common Pleas already utilizes ORAS. “83% (5,562) of the 6,696 defendants on probation as of December 31st, 2017, have an ORAS Risk Score.”

-As you can see the categories of Extreme High, High, and Moderate comprise 71% of all defendants with an ORAS risk score.

CCCP 2017 Annual report



ARRAIGNMENT STATS YTD

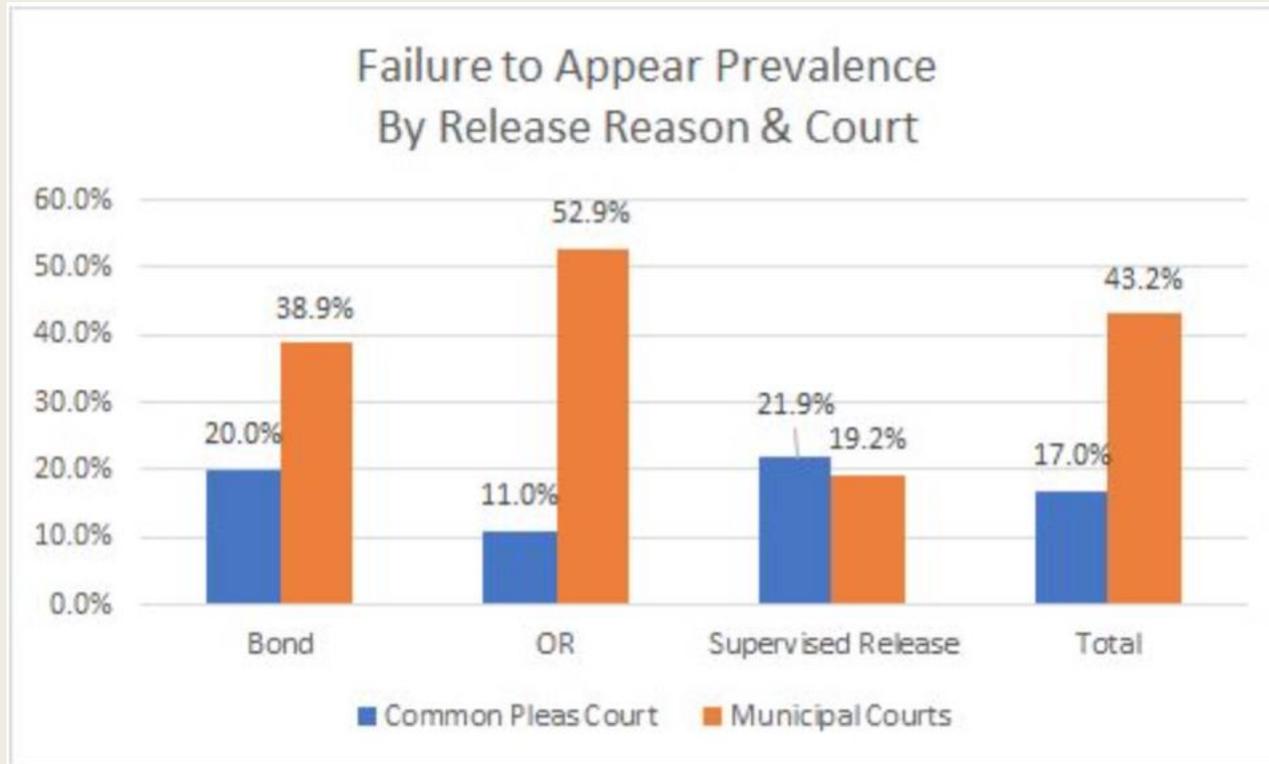
ARRAIGNMENT DATA

2017	JAN	FEB	MARCH	APRIL	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	YTD TOTAL		
Female Jails	58	61	60	51	41	48	56	59	69	58	39	52	652		
Male Jails	457	414	520	491	485	571	507	582	500	483	519	502	6031	Capias as % of	
Total Scheduled Jails	515	475	580	542	526	619	563	641	569	541	558	554	6683	Scheduled Bails	
Total Scheduled Bails	725	751	969	881	848	887	772	964	741	772	946	892	10148	36.9%	
Total Scheduled	1240	1226	1549	1423	1374	1506	1335	1605	1310	1313	1504	1446	16831		
Jails Arraigned	489	462	544	506	507	538	544	588	537	502	506	501	6224		
Bails Arraigned	394	427	527	489	472	521	435	543	394	439	477	475	5593		
Total Arraigned	883	889	1071	995	979	1059	979	1131	931	941	983	976	11817		
Total Cont.	91	96	112	135	82	122	91	97	77	96	143	126	1268		
														As % of	
CAPIAS SUBURBS/OTHER														total capias	
Straight Capias	81	91	96	91	104	118	98	128	106	97	118	123	1251	33.4%	
OCR	34	17	53	35	37	40	31	50	40	21	36	37	431	11.5%	
BFC C/SIP	28	28	59	33	31	30	23	31	18	21	41	29	372	9.9%	
TOTAL OTHER	143	136	208	159	172	188	152	209	164	139	195	189	2054	54.8%	
														2054	As % of
CAPIAS CLEVELAND														total capias	
Straight Capias	89	63	86	90	92	93	77	118	85	86	129	123	1131	30.2%	
OCR	15	20	42	26	34	24	25	29	28	30	36	23	332	8.9%	
BFC C/SIP	19	22	30	18	15	20	11	21	25	21	18	9	229	6.1%	
TOTAL CLEVELAND	123	105	158	134	141	137	113	168	138	137	183	155	1692	45.2%	
														1692	100.0%
CAPIAS TOTAL	266	241	366	293	313	325	265	377	302	276	378	344	3746		
														Total Cap	
TOTAL SCHEDULED	1240	1226	1549	1423	1374	1506	1335	1605	1310	1313	1504	1446	16831		

CCCP 2016-2017 Annual reports

- *-Based on a court system that is actively using a RAT, it's important to notice the disparities between the types of capias issued in the Cuyahoga County Court of Common Pleas per the 2017 annual report. Capias issued within the cash, Surety, property (C/S/P) category flagrantly had the lowest percentage of failure to appear rates. It's also important to note that this is the least utilized category based on type of bail set, but the most effective in holding the defendant accountable to appear at his/her court date. Why is this? With each type of bail, whether a C/S/P bond was posted, someone is financially responsible and beholden to the court other than the defendant, should he or she failed to appear. They have skin in the game hence the incentive to ensure that the defendant appears.*

Montgomery County, OH Bail Practices Review



- According to the chart to the left, the municipal courts' FTA runs significantly higher than the common pleas court, at 43.2% vs. 17%, driven

The data that we do have...

- Failure to appear rates are off the charts!
- Are these numbers acceptable?
- Who is bringing the defendant who failed to appear to the bar of justice?

Warning Signs

(Letter) NJ Assemblyman Bob Andrzejczak warns California lawmakers that bail reform is an “absolute disaster”

- As California lawmakers consider their own version of bail reform in the form of Senate Bill 10, New Jersey Assemblyman Bob Andrzejczak wrote a letter to California Assemblyman Speaker Anthony Rendon warning him that New Jersey’s bail reform law is an “absolute disaster.”



OP-ED: TASK FORCE NEEDED ON CRIMINAL JUSTICE RESPONSE TO DOMESTIC VIOLENCE

- Tiffany Wilson was killed on a Newark street by her former partner. An algorithm had concluded he did not pose a risk to the community
- Under New Jersey's relatively new Criminal Justice Reform Act, the presiding criminal judge could have sent Dawson to jail to await his trial but instead set him free after conducting two separate pretrial detention hearings. Why?

Harris County judges seek to stop federal order in historic bail lawsuit

- More than a dozen Harris County misdemeanor judges contend that public safety would be imperiled if they followed an “untenable” new pretrial release order by a Houston federal judge who has found the current county bail system unconstitutional.

-When are we going to learn from these other states?

Federal Court Allows Harris County Judges to Keep Setting Bails

- Harris County Attorney Vince Ryan praised the opinion and said in a statement that the it means the rejection of “a system that automatically releases offenders with no consideration of the rights of the victims or the protection of the community.”

-Bail works, conditions not always executed

Bail Reform Rejected by 69% of Judges in Recent Survey (Texas)

- “Money talks, and it gets people to court”
- “Other bail methods, such as signature bonds or return on own recognizance, aren’t as effective”
- “Courts should be more concerned with public safety than the rights of the accused”
- “Software used risk assessments is not reliable enough to make detention decisions”
- “Jurisdictions lack the resources to supervise released defendants”

-Where do Ohio’s Judges stand?

Nevada Governor Veto's Bail Reform Bill

- Last week Nevada Governor Brian Sandoval returned AB136 unsigned, to the Speaker of The of the Nevada State Assembly. Vetoed. AB136 was the result of recommendations made by a Nevada Supreme Court Committee to Study Evidence-Based Pretrial Release.
- “No conclusive evidence has been presented showing that the risk assessment methods proposed by AB136 are effective in determining when it may or may not be appropriate to release a criminal defendant without requiring bail.”

-Keeping the Legislature in line

Nevada Governor Veto's Bail Reform Bill

- “Here in New Mexico we have been working hard to crack down on a catch-and-release revolving door criminal justice system. A problem that irresponsible interpretations and rules implemented by courts and the Arnold pretrial risk assessment tool have only aggravated. New Mexico implemented this pretrial risk assessment tool to devastating results. I encourage those in Utah to be very skeptical of voices calling for misleading devices that would result in letting dangerous criminals back out on the street to terrorize communities.”

A warning from Governor Susana Martinez (NM) on Bail Reform, Arnold Risk Assessment

- Governor Susana Martinez (NM) warns Utah about bail bond reform efforts, court rule changes without legislative input, and the use of the Arnold Foundation Risk Assessment Tool.



Cost

OHIO LEGISLATIVE SERVICE COMMISSION

Fiscal Note & Local Impact Statement

-Robert Meeker

- “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.”
- “There is likely to be some decrease in the amount of bail surcharge revenue credited annually to the Indigent Defense Support Fund (Fund 5DY0)”

- The current proposed rule change is disconcertingly similar to H.B 439 of 2018 we revert to the fiscal note and local impact statement. The sentiment still rings true. How can you verify if any certain method is working with collecting data. Why do all the taskforce say don't worry about the money

Ankle monitor shortage keeping inmate behind bars - CINCINNATI, OH (FOX19) -

- A Cincinnati inmate is suing the sheriff and Hamilton County Commissioners.
- Rozell Martin should legally be at home right now on house arrest. His mother posted 10 percent of his \$10,000 bond the day after his May 22 arrest.
- However, Rozell remains behind bars because jailers can't release him until they fit him with an electronic ankle bracelet and they currently don't have any left.

-Would there ever be enough

Lucas County judges aim to cut down on cash bonds

- “Releasing defendants on their own recognizance also helps lower the inmate population at a county jail struggling with overcrowding. There were 404 people in Lucas County jail’s general population on Aug. 20, one inmate over the total permitted by a federal court order.”

-Although, they are over capacity... Regardless of how many defendants are turned loose, A judge is going to utilize that jail space for the even more dangerous criminal

Racial Bias

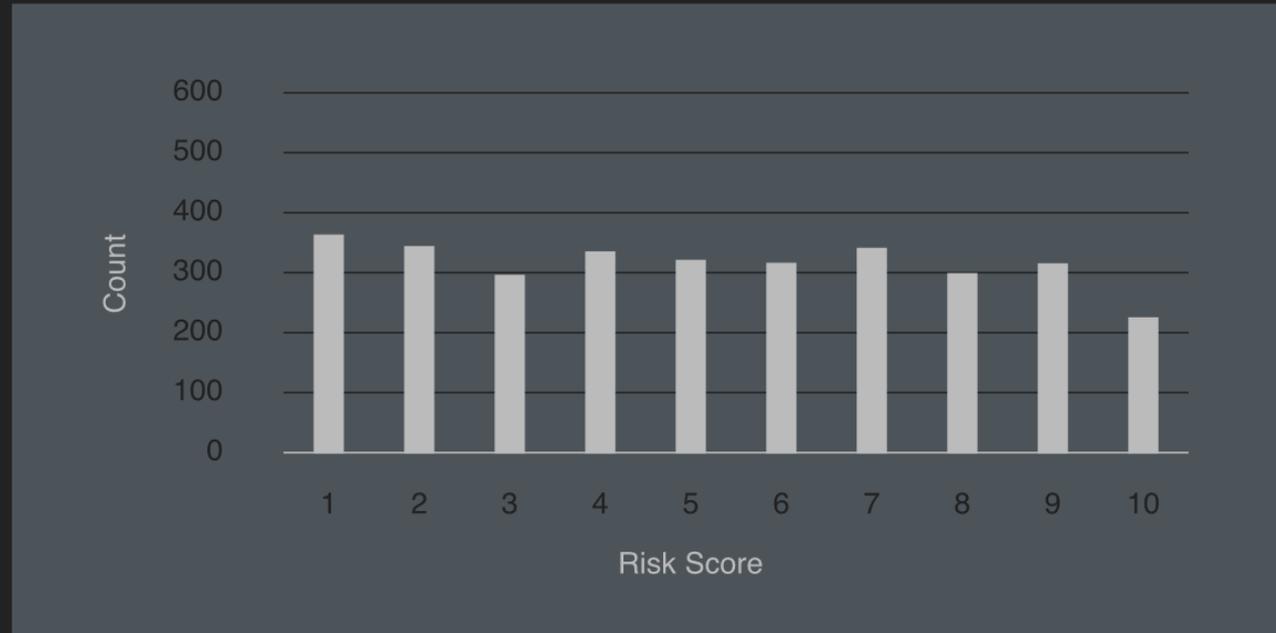
Machine Bias - (Broward County, FL)

- There's software used across the country to predict future criminals. And it's biased against blacks.
- “We ran a statistical test that isolated the effect of race from criminal history and recidivism, as well as from defendants' age and gender. Black defendants were still 77 percent more likely to be pegged as at higher risk of committing a future violent crime and 45 percent more likely to be predicted to commit a future crime of any kind.”

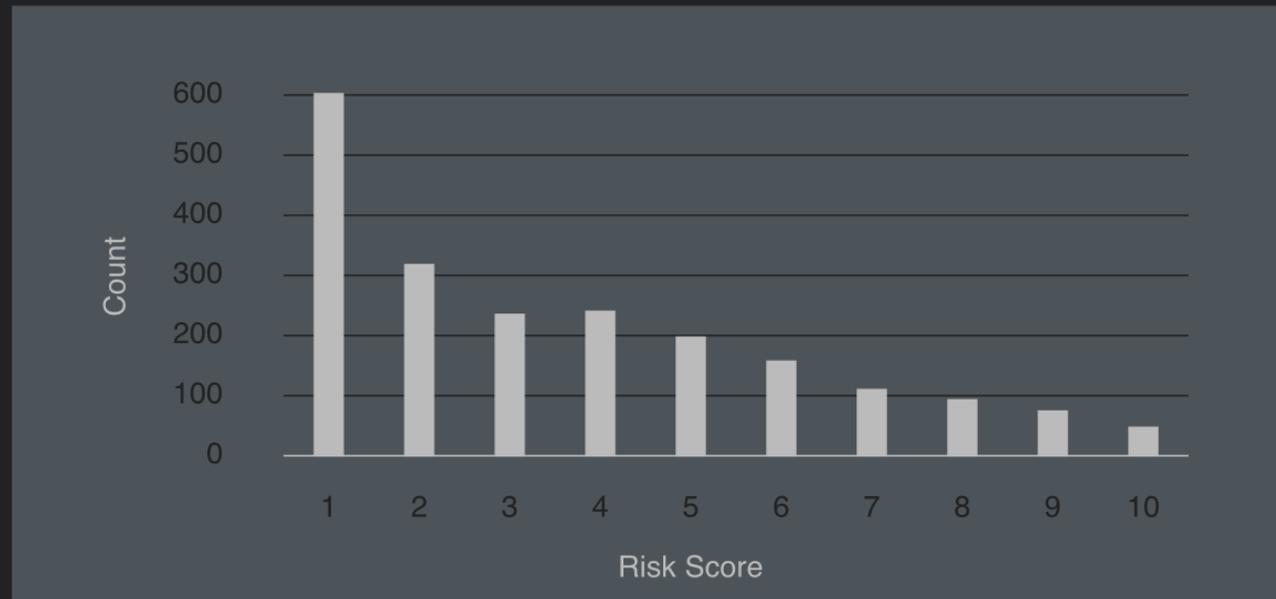
These charts show that scores for white defendants were skewed toward lower-risk categories. Scores for black defendants were not.

-A charge based system such as Bond Schedules do not discriminate

Black Defendants' Risk Scores



White Defendants' Risk Scores



Concerns

- Cost
- Judicial Discretion
- Danger to Public Safety
- Myths
- Jumping the Gun
- Accountability
- Current System

Cost

- **Ankle Monitors** - are costly to the already deemed poor. Ankle monitors create a jailed effect presuming guilt pre conviction.



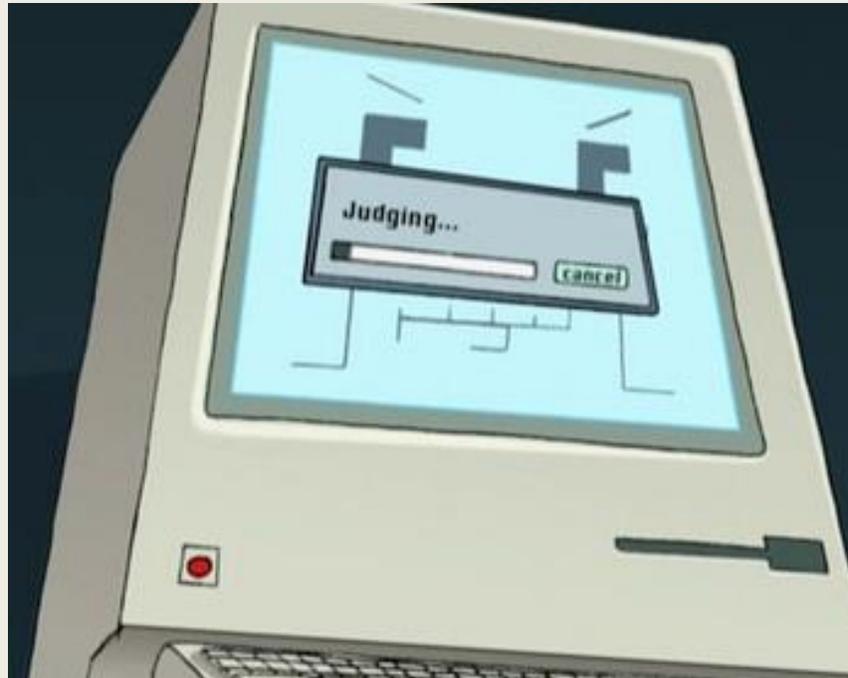
Cost

- Implementing Risk Assessment Tools (RAT's) are extremely costly to the tax payer
- Why shouldn't the burden fall on the accused?



Judicial Discretion

- Computerized Justice such as RAT's strips discretion away from Judges
- What's next? No Judges?



Judicial Discretion

- Bond Schedules are determined by **Elected Judges**, local to each area
- Bond Schedules do not discriminate as RAT's tend to do



Danger to Public Safety

- RAT's are simply unable to decipher whether an individual may be intoxicated, pregnant, suicidal, or a risk to public safety
- RAT's are not able to fact check the answers given by the defendant.
- Who will verify these 24 Hours a day?

Myths

- There is a false presumption that bed space will open up. Once a Judge finds out there is jail space, he or she will use it! Refer to the test pilot in Lucas County as there Jail Population increased under a RAT
- Fixed Jail Costs that are not taken in to consideration Ex.) Water, Electric, Staff etc.

Myths

- Surveys conducted regarding the number of inmates sitting in jail pre conviction are bias. What these surveys don't take in to account are defendants with the following
 - Multiple cases pending while a **Serving Sentence**
 - **Holders** from other jurisdictions (Only verified upon release)
 - **Felony Cases** that must be heard in front of a Judge
 - Clerk of Courts Operating Hours amongst **Common Pleas Cases**
 - **High Bond Amounts** which an elected judge chose based on their very own discretion

Jumping the Gun

- After reaching out to each Court in the State of Ohio with the attempt to obtain general information on the equipment being used, only 12 responded
- Do we know the true number of Outstanding Bench Warrants in Ohio?
- Only a handful out of the hundreds of Courts have test piloted this new program
- We still aren't even sure of the success it may or not be having

Accountability

- You do not go in jail because you're poor, you broke the law
- Who will retrieve the defendants that fail to appear under a RAT? Pretrial Services?
- When will the victims get their day in court?

Current System

- The way the law reads right now, the **preferred method of release** is the OR Bond/
Own Recognizance Bond
- Quite similar to this new proposal of a RAT the OR Bond releases defendants with no financial obligation
- Currently judges have the power to release **anyone at anytime** on an OR Bond
- **As a whole, Rule 46 is a Risk Assessment as it stands today**

Current System

- The Summons/ Recite – an order to appear in front of a judge or magistrate; This little piece of paper is being used on a daily basis.
- The Summons/ Recite (**Just like the OR Bond**) has no financial obligation on defendants
- This method is even used Pre Conviction, Post FTA, and even Post Numerous FTAs.

Current System

- Cash, Surety, 10%, and Property Bonds offer an incentive for defendants to return to court
- As the vast majority of judges have figured out, **when the OR Bond and Summons fails**, a Surety/ Bail Bond is the only thing that can surely guarantee appearance
- **Bail Assures Justice**

Comments from previous Rule Change Proposal

Comment from John F. Litle III, J.D., Assistant Prosecuting Attorney, Muskingum County

- There is no tool which will ever be created by the University of Cincinnati or any other institution, panel of experts, or administrative body which will displace the judgment of a Judge elected by the actual panel of experts recognized by the Ohio Constitution, which is the electorate of the County in which the Judge sits. The concept that the administration of criminal law can be distilled to the application of artificial intelligence or a system of criminally self-reported check-boxes isn't merely a proven failure (ORAAS), it is also offensive both to the Constitution of the State, the citizens who entrust the judgment to make these decisions to a judge, and to the judiciary itself.

Comment from John F. Litle III, J.D., Assistant Prosecuting Attorney, Muskingum County

- This proposed change may not consider common practice in small jurisdictions with only a few Judges who prefer to attend to their own cases and do so promptly, but who share administrative duties such as arraignments with a judge who is not assigned the case of the defendant being arraigned. In every jurisdiction this rule invites forum shopping related to the timing of turning oneself in on a warrant or scheduling the hearing on a summons, which is a moral hazard that the rules should seek to avoid creating.

Comment from JUDGE JANUZZI

- **(Proposal) - Rule 46(C) (7) Require compliance with alternatives to pretrial detention, including but not limited to diversion programs, day reporting, or comparable alternatives, to ensure the person's appearance at future court proceedings;**
- **Comment/Suggestion: Unsure why “diversion programs” would be relevant to bond and release and appearance in court. It seems out of place and not relevant. My experience with Diversion programs is that it is a method of resolving a case after a person has appeared in the case. It may cause confusion and interpretation problems.**

Links to Articles & Resources

- 1. <https://www.toledoblade.com/Courts/2018/04/06/Ohio-considers-altering-its-bail-system.html>
- 2. <http://www.fox19.com/story/38352789/ankle-monitor-shortage-keeping-inmate-behind-bars/>
- 3. <https://www.chron.com/news/houston-texas/houston/article/Harris-County-judges-seek-to-stop-federal-order-13136477.php>
- 4. <https://www.houstonpublicmedia.org/articles/news/2018/08/15/300279/harris-county-judges-will-keep-setting-bails-as-litigation-over-bail-system-goes-on>
- 5. <https://www.usbailreform.com/letter-nj-assemblyman-bob-andrzejczak-warns-california-lawmakers-bail-reform-absolute-disaster/>
- 6. <http://www.asc-usi.com/blogentry.aspx?id=4602>
- 7. https://www.youtube.com/watch?v=gZIVRAqnlqEhttps://www.whec.com/news/bail-battle-greece-police-warn-over-proposed-bail-reform/5240011/?fbclid=IwAR3J84036FyZA3aN0xqbQVljcxub9-dgP-zXKFHoUaFGWDkPe_7wCHX9480
- 8. https://www.whec.com/news/bail-battle-greece-police-warn-over-proposed-bail-reform/5240011/?fbclid=IwAR3J84036FyZA3aN0xqbQVljcxub9-dgP-zXKFHoUaFGWDkPe_7wCHX9480
- 9. https://wnyt.com/news/prosecutors-discovery-for-justice-act-criminal-justice-reform-witnesses-victims-safety-legislature-lawmakers-albany-soares-/5242490/?fbclid=IwAR3I6zQhM8SBQbxbCW3hNhhhfUSnGHt_ff8OfyF1aVCi-j1T6IAbxJjwWqM
- 10. https://www.njspotlight.com/stories/19/02/11/op-ed-nj-needs-task-force-to-focus-on-criminal-justice-response-to-domestic-violence/?fbclid=IwAR334LLApqbZP7sGDVGIFDDj_6HGxEVnm7K3a7ebl_uwLjhCHq_5wKHLx4k

Links to Articles & Resources

- 11. http://texasallianceforsafecommunities.org/news/bail-reform-rejected-by-judges/?fbclid=IwAR05Ko5AwcPrTltwgTx3dvh1deL-xfu_vA32x4xmhyktXTvQRAXiM-kdpY
- 12. <https://www.legislature.ohio.gov/download?key=8525&format=pdf>
- 13. https://cp.cuyahogacounty.us/media/1841/2016_annual_report.pdf
- 14. https://cp.cuyahogacounty.us/media/1838/20180703_2017annualreport.pdf
- 15. <https://www.facebook.com/TuscarawasCountySheriff/posts/2084536188297839>
- 16. <https://www.toledoblade.com/local/courts/2018/09/05/Lucas-County-judges-aim-to-cut-down-on-cash-bonds-assessment-tool-shows/stories/20180829141>
- 17. <https://www.toledoblade.com/Editorials/2018/04/15/Bail-or-jail.html>
- 18. <https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing>
- 19. <http://www.supremecourt.ohio.gov/Boards/bailSys/resources/montgomeryCtyBailPracticesReview.pdf>
- 20. Columbus Dispatch – Wanted Series Part 1 – Unserved Justice