



VOTERS ACROSS STATE ENDORSE NEW BAIL RULES IS IT TIME FOR COMPREHENSIVE BAIL REFORM?

BY ADRIAN D. THOMPSON

On Nov. 8, 2022, voters across the state of Ohio overwhelmingly approved Ballot Issue 1, the Determining Bail Amount Based on Public Safety Amendment, designed to:

- “Require Ohio courts, when setting the amount of bail, to consider public safety, including the seriousness of the offense, as well as a person’s criminal record, the likelihood a person will return to court, and any other factor the Ohio General Assembly may prescribe.”
- “Remove the requirement that the procedures for establishing the amount and conditions of bail be determined by the Supreme Court of Ohio.”

Proponents of the amendment argued the measure was needed for public safety: to protect Ohio communities, to keep dangerous offenders off the streets, and to prevent career criminals from committing additional crimes. Opponents disagreed with the very foundation of that argument, maintaining that the purpose of bail is not to punish alleged offenders but to ensure that those accused of crimes show up in court for trial. Further, they contended, prosecutors already have ways of keeping dangerous suspects incarcerated pending trial.

By a margin of nearly four to one, the citizens of the state agreed that the change was necessary, and Section 9, Article 1 of the Ohio Constitution was immediately revised to reflect the language of the amendment.

What does this change mean for lawyers and criminal defendants in Northeast Ohio? I see three broad implications:

1. By removing the authority of the Supreme Court of Ohio to set the amount and

conditions of bail, the amendment will lead to significant variations in bail for different defendants. People accused of similar crimes may be subject to vastly different bail requirements, even within the same courthouse, and their pretrial situations will depend on the judge selected to hear their case. These discrepancies could lead to increased challenges to high bail amounts, creating additional trials in an already overburdened court system.

2. Under the amendment, the Ohio General Assembly will be charged with establishing the list of factors to be considered when setting bail. This is likely to politicize further the issue of bail amounts and conditions. What’s more, as the political pendulum swings in future elections, that list risks growing and shrinking with each general election.
3. An estimated 60% of people currently in jail are there not because they’ve been judged guilty but because they cannot afford bail. With judges free to set higher bail amounts based on the ‘seriousness of the crime,’ that number is likely to go up, placing additional burdens on our overcrowded jails.

In addition to creating new challenges for prosecutors, criminal defense lawyers, and individuals accused of crimes, this change to our state constitution perpetuates a flawed cash bail system that criminalizes poverty and disproportionately affects communities of color. Defendants awaiting trial who cannot afford bail – people presumed innocent under the law – often pay a high price for pretrial incarceration. Even a few days in jail can lead

to a lost job, missed rent and other payments, and damaged family relationships. And that’s just before trial. Research has shown that people jailed while awaiting trial are four times more likely to receive prison sentences than those who have been released merely because they can afford bail.

But the accused aren’t the only ones paying for pretrial detention. Keeping people in jail also incurs high costs that taxpayers must bear, often for defendants who pose no threat to public safety. In 2018, the nonpartisan Legislative Services Commission estimated that pretrial detention in Ohio costs more than \$250 million per year.

In addition, studies have shown that people of color are assigned cash bail more often and for higher amounts than white people in similar circumstances, which compounds the significant racial disparities in pretrial detention rates.

It doesn’t have to be this way. Communities across the country are experimenting with bail reform without compromising public safety. There has been some progress in Ohio, where legislators in both the House and the Senate have introduced companion bills to reform the state’s bail process, an essential first step on the long road to a more just and equitable system.

Let’s hope this progress continues.

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