



Sub. S.B. 8

123rd General Assembly
(As Passed by the General Assembly)

Sens. Blessing, Johnson, Oelslager, Cupp, Hottinger, Watts, Latta, Nein, White, Mumper, Gardner, Drake, Schafrath, Spada

Reps. Lucas, DePiero, Womer Benjamin, Willamowski, Tiberi, Taylor, Jacobson, Householder, Buchy, Mottley, Thomas, Haines, Salerno, Coughlin, Olman, Damschroder, Pringle, Vesper, Corbin, Roman

Effective date: *

ACT SUMMARY

- Establishes procedures to implement a portion of the amendment to Article I, Section 9 of the Ohio Constitution adopted in the November, 1997, general election.
- Requires a judge, on the motion of the prosecuting attorney or on the judge's own motion, to hold a hearing to determine whether to deny bail to a person charged with aggravated murder when it is not a capital offense, murder, a felony of the first or second degree, aggravated vehicular homicide, or a fourth degree felony OMVI offense.
- States that no person so charged may be denied bail unless the judge finds by clear and convincing evidence that the proof is evident or the presumption great that the person committed the offense, finds by clear and convincing evidence that the person poses a substantial risk of serious physical harm to any person or to the community, and finds by clear and convincing evidence that no release conditions will reasonably assure the safety of that person and the community and provides standards for making those findings.

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared.*

- Provides that the state has the burden of proof on the above-described matters that a judge must find in order to deny bail for the specified offenses.
- Requires that, if bail is denied, the accused must be detained and the court or magistrate must require the officer having custody of the person to take a message immediately to an attorney at law within the municipal corporation where the person is detained or to make available immediately to the person a telephone for calling to arrange for legal counsel.
- Authorizes the court of common pleas having jurisdiction over a case to continue an order of a municipal court or a county court denying bail or to hold a hearing to determine whether to continue that order.
- Provides a procedure by which an order denying bail may be appealed.

CONTENT AND OPERATION

Continuing and prior law

Provision for bail in the Ohio Constitution

Prior to January 1, 1998, Article I, Section 9 of the Ohio Constitution read as follows: "All persons shall beailable by sufficient sureties, except for capital offences where the proof is evident, or the presumption great. Excessive bail shall not be required; nor excessive fines imposed; nor cruel and unusual punishments inflicted."

In the general election of November 4, 1997, as the result of language placed on the ballot by Sub. H.J.R. 5 of the 122nd General Assembly, Ohio electors adopted an amendment to Article I, Section 9 of the Ohio Constitution. On and after January 1, 1998, that section reads as follows:

All persons shall beailable by sufficient sureties, except for a person who is charged with a capital offense where the proof is evident or the presumption great, and except for a person who is charged with a felony where the proof is evident or the presumption great and where the person poses a substantial risk of serious physical harm to any person or to the community. Where a person is charged with any

offense for which the person may be incarcerated, the court may determine at any time the type, amount, and conditions of bail. Excessive bail shall not be required; nor excessive fines imposed; nor cruel and unusual punishments inflicted.

The General Assembly shall fix by law standards to determine whether a person who is charged with a felony where the proof is evident or the presumption great poses a substantial risk of serious physical harm to any person or to the community. Procedures for establishing the amount and conditions of bail shall be established pursuant to Article IV, Section 5(B) of the Constitution of the State of Ohio.

The Schedule enacted in Sub. H.J.R. 5 provides that until the General Assembly enacts standards to determine whether a person who is charged with a felony where the proof is evident or the presumption great poses a substantial risk of serious physical harm to any person or to the community, bail or the denial of bail must be determined as if the amendment of Section 9 of Article I of the Constitution of the State of Ohio had not been written.

Statutory bail provisions

Continuing law provides that when, after arrest, an accused person is taken before a court or magistrate or when an accused appears pursuant to terms of a summons or notice (an affidavit or complaint previously having been filed), the court or magistrate must inform the accused of the nature of the charge and the identity of the complainant and of various rights of the accused. Under prior law, after that information has been provided, the magistrate, clerk, or prosecutor of the court was required to arraign the accused, reading the affidavit or complaint, or reading its substance, omitting purely formal parts, to the accused unless the reading was waived. The judge or magistrate was then required to inquire whether the accused understood the nature of the charge. If the accused did not indicate understanding, the judge or magistrate was required to give explanation in terms of the statute or ordinance claimed violated. If the accused was not represented by counsel and expressed a desire to consult with an attorney at law, the judge or magistrate was required to continue the case for a reasonable time to allow the accused to send for or consult with counsel and was required to set bail for the later appearance if the offense is bailable. If the accused was not able to make bail, or the offense was not bailable, the court or magistrate was required to require the officer having custody of the accused forthwith to take a message to any attorney at law within the municipal corporation where the accused is detained, or

to make available to the accused use of a telephone for calling to arrange legal counsel or bail. (Sec. 2937.02, not in the act, and 2937.03.)

Prior law further required that, if an offense was not bailable or sufficient bail was not offered, the accused was required to be committed to the jail of the county in which the accused was to be tried or, in the case of an offense against a municipality, in the jail of that municipality if such a jail existed (sec. 2937.32).

Operation of the act

Implementation of the amendment to Article I, Section 9 of the Ohio Constitution

The act establishes procedures to implement the mandate of newly amended Article I, Section 9, of the Ohio Constitution that requires the General Assembly to "fix by law standards to determine whether a person who is charged with a felony where the proof is evident or the presumption great poses a substantial risk of serious physical harm to any person or to the community." It requires a judge, on the motion of the prosecuting attorney or on the judge's own motion, to hold a hearing to determine whether to deny bail to an accused person charged with one of the following offenses: aggravated murder when it is not a capital offense, murder, a felony of the first or second degree, aggravated vehicular homicide, or a "fourth degree felony OMVI offense" (see "**Definitions**," below). The judge must order that the accused be detained until the conclusion of the hearing. Except for good cause, a continuance on the motion of the state cannot exceed three "court days" (see "**Definitions**," below). Except for good cause, a continuance on the motion of the accused cannot exceed five court days unless the accused's motion waives in writing the five-day limit and states in writing a specific period for which the accused requests the continuance. A continuance granted upon a motion of the accused that waives in writing the five-day limit cannot exceed five court days after the period of continuance requested in the motion.

At the hearing, the accused has the right to be represented by counsel and, if the accused is indigent, to have counsel appointed. The judge must afford the accused an opportunity to testify, to present witnesses and other information, and to cross-examine witnesses who appear at the hearing. The rules concerning admissibility of evidence in criminal trials do not apply to the presentation and consideration of information at the hearing. Regardless of whether the hearing is being held on the motion of the prosecuting attorney or on the court's own motion, the state has the burden of proving that the proof is evident or the presumption great that the accused committed the offense with which the accused is charged, of proving that the accused poses a substantial risk of serious physical harm to any

person or to the community, and of proving that no release conditions will reasonably assure the safety of that person and the community.

The act authorizes the judge to reopen the hearing at any time before trial if the judge finds that information exists that was not known to the movant at the time of the hearing and that that information has a material bearing on whether bail should be denied. If a municipal court or a county court enters an order denying bail, a judge of the court of common pleas having jurisdiction over the case may continue that order or may hold a hearing to determine whether to continue that order. (Sec. 2937.222(A).)

The act prohibits the denial of bail to an accused person under its provisions unless the judge finds by clear and convincing evidence that the proof is evident or the presumption great that the accused committed the offense with which the accused is charged, finds by clear and convincing evidence that the accused poses a substantial risk of serious physical harm to any person or to the community, and finds by clear and convincing evidence that no release conditions will reasonably assure the safety of that person and the community. (Sec. 2937.222(B).)

The act requires the judge, in determining whether the accused person poses a substantial risk of serious physical harm to any person or to the community and whether there are conditions of release that will reasonably assure the safety of that person and the community, to consider all available information regarding all of the following (sec. 2937.222(C)):

(1) The nature and circumstances of the offense charged, including whether the offense is an offense of violence or involves alcohol or a drug of abuse;

(2) The weight of the evidence against the accused;

(3) The history and characteristics of the accused, including, but not limited to, both of the following:

(a) The character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, and criminal history of the accused;

(b) Whether, at the time of the current alleged offense or at the time of arrest, the accused was on probation, parole, post-release control, or other release pending trial, sentencing, appeal, or completion of sentence for the commission of an offense under Ohio law, the law of another state or the United States, or a municipal ordinance;

(4) The nature and seriousness of the danger to any person or the community that would be posed by the person's release.

An order of the court of common pleas denying bail pursuant to the act's provisions is a final appealable order. In an appeal of the denial of bail under the act's provisions, the court of appeals must do all of the following: (1) give the appeal priority on its calendar, (2) liberally modify or dispense with formal requirements in the interest of a speedy and just resolution of the appeal, (3) decide the appeal expeditiously, and (4) promptly enter its judgment affirming or reversing the order denying bail. The pendency of an appeal does not deprive the court of common pleas of jurisdiction to conduct further proceedings in the case or to further consider the order denying bail. If, during the pendency of an appeal, the court of common pleas sets aside or terminates the order denying bail, the court of appeals must dismiss the appeal. (Sec. 2937.222(D).)

Definitions

For purposes of its provisions described above, the act incorporates the following definitions set forth in existing law (sec. 2937.222(E)):

(1) "Court day," as defined in existing section 5122.01, means Monday, Tuesday, Wednesday, Thursday, and Friday, except when that day is a holiday.

(2) "Fourth degree felony OMVI offense," as defined in existing section 2929.01, means a violation of the prohibition against operating a vehicle, streetcar, or trackless trolley by a person who is under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse, or has a prohibited concentration of alcohol in the person's blood, breath, or urine, when the violation is classified as a felony of the fourth degree. The violation is classified as a felony of the fourth degree if, within six years of the offense, the person has been convicted of or pleaded guilty to three or more specified alcohol-related and vehicle-related offenses, or if the person previously has been convicted of a violation of the prohibition under circumstances in which it was a felony of the fourth degree, regardless of when the prior felony violation and conviction occurred.

Changes to existing statutory law with respect to bail

The act repeals the prior provision that required that, if the offense with which an accused was charged was not bailable or if sufficient bail was not offered, an accused was required to be committed to a jail of the county in which the accused was to be tried or in the jail of the municipality if the offense was against a municipality, and replaces the repealed provision with a requirement that, if an offense is not bailable, if the court denies bail to the accused, or if the

accused does not offer sufficient bail, the court must order the accused to be detained (repeal of existing sec. 2937.32 and enactment of new sec. 2937.32).

The act modifies the provision that required the officer having custody of the accused, if the accused was not able to make bail or the offense was not bailable, to take a message to an attorney within the municipal corporation where the accused was detained or to make available to the accused use of a telephone for calling to arrange legal counsel or bail. The act requires the officer to take those actions if the accused is not able to make bail, *bail is denied*, or the offense is not bailable. It also requires the officer to take the message or make the telephone available *immediately*, instead of *forthwith*. (Sec. 2937.03.)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-20-99	p. 26
Reported, S. Judiciary	02-10-99	p. 122
Passed Senate (29-4)	02-10-99	p. 123
Reported, H. Criminal Justice	03-17-99	p. 318
Passed House (92-0)	03-23-99	pp. 340-341
Senate concurred in House amendments (30-3)	03-24-99	pp. 236-237

99-SB8.123/rss

