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## ***Detailed Fiscal Analysis***

### **Provisions of the Bill**

#### ***Existing Law***

Currently, the setting of pretrial bail is addressed through both statutory law and Criminal Rules. Specifically, under Section 2937.23 (A) of the Ohio Revised Code, in felony cases, the judge or magistrate is required to fix bail with consideration of the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of the defendant appearing at trial.

Criminal Rule 46, adopted by the Supreme Court pursuant to Article IV, Section 5 (B) of the Ohio Constitution also focuses on the issue of bail, identifying its purpose as being to ensure the appearance of the defendant at all criminal proceedings. Under Criminal Rule 46, persons are entitled to bail in all but capital cases where the proof is evident or the presumption great. As a result, any person entitled to bail must be released on their own recognizance or through the execution of an unsecured appearance bond in an amount specified by the judge or magistrate. This being said however, if a judge or magistrate determines that release of the defendant under the above conditions will not ensure appearance as required, one or more of the following conditions must be imposed: 1) place the person in custody awaiting trial; 2) place restrictions on the person's travel; 3) require the posting of an appearance bond of either \$25 or a sum equal to 10 percent of the amount of the bond, whichever is greater (90 percent of the deposit is returned upon the performance of the appearance bond conditions); 4) require execution of a bond secured by real estate in the county, or the deposit of cash or securities allowed by law in lieu of bond; or 5) impose any other constitutional condition considered reasonably necessary to ensure appearance.

As stated in Criminal Rule 46, in determining the conditions of release the judge or magistrate must consider the following factors: 1) the nature and circumstances of the offense charged; 2) the weight of evidence against the accused; 3) the family ties of the accused; 4) the employment and financial status of the accused; 5) the character and mental condition of the accused; 6) the length of time the accused has resided in the community; 7) the criminal record of the accused; and 8) the history of the accused in terms of appearing at court proceedings and flight to avoid prosecution.

#### ***Operation of the Bill***

The bill would require a judge or magistrate setting bail in felony OMVI cases to consider the following: 1) history of the person in regard to the offense; 2) mental health of the person; 3) history of the person in regard to operating a vehicle under suspension or revocation; 4) the degree to which the person operating a motor vehicle is a threat to others; 5) whether setting bail at a high level would interfere with the ongoing treatment or counseling of the person or their family; and 6) the person's driving history. The consideration of the above factors could result in setting of bail at a mandatory level in accordance with a schedule set by the court.

## Impact of the Bill

The Legislative Budget Office estimates completed for S.B. 166 (Felony OMVI, enacted during the 121<sup>st</sup> General Assembly), stated that as many 1,500 felony OMVI cases could be experienced annually. Since the criteria considered by a judge or magistrate in setting bail under the provisions of the bill are generally in practice already, the number of cases actually affected should be minimal. According to a representative of the Ohio Judicial Conference, while the bill requires a judge or magistrate to consider the factors cited above, under Criminal Rule 46 these factors often already come into consideration in assessing the risk of flight. Bail is then set at a level that the judge or magistrate believes will ensure appearance. By increasing the potential difficulty in posting bail through raising the amounts required, the bill could result in either a gain or loss in county revenues as those accused either pay the higher bail or are incarcerated awaiting adjudication.

Since granting bail is exclusively a local function, the bill should have no direct fiscal impact on the state. Instead, the primary impact of the bill should fall on counties operating common pleas courts and county jails. Specifically, the bill could produce a potential minimal gain or loss in revenues as bail amounts are set higher or fewer defendants are able to pay the increased amounts.\*

As a result of increasing the difficulty in meeting bail, the bill could produce a potential increase in county expenditures related to increased demand for pre-conviction incarceration. Pre-conviction incarceration generally takes the form of confinement in a county jail and according to the Ohio Criminal Sentencing Commission is on average 67.7 days in length. Currently the average daily cost of incarceration in a county jail is \$55 and is paid entirely by the county. However, since it is estimated that the bill should result in no more than a minimal increase in the number of persons failing to make bail, any increase in expenditures should be minimal. Related to the potential for increased expenditures as a result of pre-conviction incarceration and the reduced probability of release awaiting trial is a potential decrease in the frequency of bail violations. As a result counties could experience a decrease in both revenues and expenditures related to a loss in bails forfeited and a reduction in extradition costs.

\* Proceeds of bail forfeited for failure to appear or other violations go to the entity operating the court in which trial is to take place.

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