
Detailed Fiscal Analysis

Background

On November 4th, 1997, the voters of the State of Ohio adopted an amendment that tightened bail provisions found in Article I, Section 9 of the Ohio Constitution. Prior to this amending, all offenders, except for capital offenders where proof is evident or the presumption great, were provided the opportunity to post bail while awaiting trial. The new amendment allows bail to be additionally denied to any person charged with a felony, where, by clear and convincing evidence, the proof is evident or the presumption great that the accused committed the offense, and that the person poses a substantial risk of serious physical harm to any person or to the community. The amendment empowered the General Assembly to set the standards to determine whether such a person poses a substantial risk of serious physical harm to any person or to the community. This bill attempts to set the specific standards and revises the existing provisions that deal with bailable offenses.

Currently, bail cannot be denied to an individual not accused of a capital offense. However, it is a common or standard practice for individuals accused of serious non-capital offenses to have bail set at such a high amount that, while not excessive, it is a barrier to being released prior to trial. This amendment and subsequent legislation is an attempt to become more “intellectually honest” with the system. However, this bill affects only bailable individuals accused of aggravated murder, murder, aggravated vehicular homicide, felonies of the first or second degree or a fourth degree felony OMVI offense. It does not affect individuals accused of a misdemeanor offense.

Local Effects

In the long term, this bill will have a minor impact upon the courts. The effect upon local jails, prosecutors and public defenders will be more long lasting. It is difficult to determine the number of accused individuals who will be affected by this legislation since the decision to deny bail is permissively held by the judge and/or the prosecuting attorney. Individuals denied bail must be accused of the specific felonies and pose a substantial risk of serious physical harm to any person or to the community. Some judges and prosecutors will go through the process to deny bail, but others have suggested that such accused persons will continue to receive bail that is just set at a highly unobtainable level. There are several political and philosophical factors that may impact the decision to seek a denial of bail.

The local fiscal effects can be felt in both the revenues and the expenditures of counties. Since the bill only affects those accused of serious felonies, it will have an impact upon the Courts of Common Pleas and not municipal or county courts. It appears as though the potential for additional hearings will not place a significant burden upon the courts. In other states, bail hearings are tacked onto other pre-trial hearings without adding much strain to the court’s calendar. It will potentially affect the counties through additional hearings, additional or longer incarcerations, and the potential loss of revenue through forfeiture of bonds.

If a judge or a prosecuting attorney seeks to deny bail, then a hearing must be held to determine by clear and convincing evidence whether the proof is evident or the presumption great that the accused committed the crime and poses a substantial risk of serious physical harm to any person or to the community. The potential fiscal burden created by this hearing is small for both prosecutors and public defenders. The county could also incur incarceration costs because the accused person might have been released on bail, as opposed to being held in custody as a result of the bill.

If bail is denied, then the possibility exists for more additional costs and loss of revenue. If denied bail, an accused may appeal the decision to the local Court of Appeals. The court must give the appeal priority on its calendar. This is an additional hearing that may require travel and other expenses not currently required of prosecutors and public defenders. The State of Ohio has only twelve Courts of Appeals. Prosecutors and public defenders might not incur much expense in counties that are the sole jurisdiction of an appellate court. However, the Third District Court of Appeals covers seventeen counties. A majority of the Courts of Appeals cover more than six counties.

These potential additional expenses are compounded by the potential loss of revenue from the loss of bail not being forfeited. When an accused “jumps bail” or doesn’t appear in court on the proper day, any bail that was being held is forfeited to the county. The potential for loss is small. Most of the accused affected by this bill would probably not have made bail and then subsequently have it forfeited to the county. The fiscal effects of this bill are small, but are potentially large enough to exceed an aggregate of \$5,000 annually for some counties.

State Effects

Bail denials potentially will increase the workload for the Courts of Appeals, which are operated by the state. This effect is the result of allowing an order of denying bail to be appealed from the Court of Common Pleas to the Court of Appeals. However, due to the potential that the number of denials and appeals will be small, this does not appear to have a significant fiscal effect.

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