



April 20, 2020

Supreme Court of Ohio  
65 South Front Street  
Columbus, OH 43215

*Sent via Email*

Dear Chief Justice O'Connor, Justice Kennedy, Justice French, Justice Fischer, Justice DeWine, Justice Donnelly, and Justice Stewart,

We hope this letter finds each of you well during this trying time.

We are writing to share our deep concerns regarding updates to the proposed amendments to Criminal Rule 46, which we recently learned were re-submitted to the Ohio General Assembly in March.

Every day, approximately two-thirds of people in Ohio's jails are held pretrial. That can be as many as 12,000 people on any given day. These individuals are legally innocent – many are behind bars not because of what they have done, but because of what they don't have. Those who remain in jail often suffer unimaginable consequences, such as losing their job, their home, and even custody of their children. Individuals who remain in jail pretrial, compared with those arrested for the same crime who are able to purchase their release, are more likely to get [convicted](#), be [sentenced](#) to jail and prison, and receive sentences that are [two to three times longer](#). This practice exacerbates the criminalization of poverty and creates a two-tiered system of justice.

From the beginning, we have viewed changes to Criminal Rule 46 as an opportunity to mitigate the suffering caused by our overreliance on cash bail and bring court practices into compliance with the Constitution. We have therefore taken advantage of every opportunity to provide public comment ([November Comment with over 50 signatories](#), [December Comment](#)). Our overarching concern with each iteration of Criminal Rule 46 has been that it lacks the procedural safeguards necessary to change bail-setting practices. For example, while we support the requirement that judges "release the defendant on the least restrictive conditions," without the requirement that judges make written findings on the record regarding why something is least restrictive and what makes it necessary, the added language is just words on paper.

One proposed change that would have made a true difference was the previous requirement that financial conditions of release be limited to situations in which defendants pose a risk of non-appearance. This limitation is aligned with Supreme Court jurisprudence: "[b]ail set at a figure

**higher than an amount reasonably calculated to fulfill [the] purpose [of assuring the defendant's appearance at trial] is 'excessive' under the Eighth Amendment.”**<sup>1</sup> Accordingly, cash bail should only be set if a defendant is a flight risk, after an ability to pay determination which can ensure the court knows what amount will act as an incentive to return to court, versus what will lead to unconstitutional, wealth-based detention. Unfortunately, the most recent version of Criminal Rule 46 now provides that financial conditions of bail be related to a defendant's “risk of non-appearance, the seriousness of the offense, and the previous criminal record of the defendant.”

Cash bail should not be “related” to offense seriousness or a defendant's previous criminal record, because cash bail does not promote public safety, it simply allows wealthier individuals to pay for their release while stranding other individuals behind bars unnecessarily. If someone is determined to be a threat and a judge is seeking detention, courts must rely on Oh. Rev. Code § 2937.222, which outlines the procedural safeguards necessary for a judge to detain someone pretrial, because those charged with the most serious crimes are still entitled to due process before being denied their liberty. Alternatively, judges can set many different conditions of release including various levels of supervision, check-ins, or even treatment, instead of relying on cash bail that may lead to unnecessary detention. Allowing for financial conditions of release to be set in relation to charge offense or past criminal history is either a condonation of unconstitutional circumventions of the procedural safeguards necessary to detain pretrial or an endorsement of pretrial punishment, and both lead to wealth-based detention. Neither the purpose nor the outcome is constitutional.

Unfortunately, in courtrooms across Ohio, judges circumvent the requirements of § 2937.222, Due Process, and Equal Protection and detain pretrial individuals every day by setting cash bail that for many is cost-prohibitive. This most recent update to the proposed amendments to Criminal Rule 46 sanctions this bail-setting practice that has been held unconstitutional by an increasing number of federal courts, with more cases pending.<sup>2</sup>

The Supreme Court of Ohio has the opportunity to enact critically needed bail reform, but the current version of Criminal Rule 46 falls quite short. Ohioans deserve bail reform in both policy and practice. The justice one receives should not depend on their zip code or whether they land before a judge who has the courage to recognize that common bail-setting practices violate the Constitution. Abiding by constitutional norms should not be the exception; we encourage the Supreme Court of Ohio to quite literally make it the rule. We urge you to submit another version of Criminal Rule 46 to the Ohio General Assembly that includes procedural safeguards and specifies that cash bail should only be set if someone is a flight risk. Otherwise, we fear the result will be a continuation of unconstitutional, wealth-based detention.

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<sup>1</sup> *ODonnell v. Harris County*, 892 F.3d 147 (5th Cir. 2018)(Citing *Stack v. Boyle*, 342 U.S. 1, 5 (1951)).

<sup>2</sup> *ODonnell v. Harris County*, 892 F.3d 147 (5th Cir. 2018); *Ross v. Blount*, No. 2:19-cv-11076 (E.D. Mich. filed April 14, 2019); *Schultz v. State*, 330 F.Supp.3d 1344 (N.D. Ala. 2018) (preliminary injunction granted); *Daves v. Dallas County*, 341 F.Supp. 3d 688 (N.D. Tex. 2018) (preliminary injunction granted).

We have included below a story written by Daniel Rogers, which describes how our criminal legal system's reliance on cash bail created a "snow ball effect" in his life. While Daniel has fought for and found his footing, his experience demonstrates how policy decisions regarding bail-setting practices have real-life consequences that are too often devastating.

If you have any questions, please do not hesitate to contact us.

Sincerely,



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If you have any questions for Daniel, please reach out to our Organizing Manager, Greer Aeschbury, at [gaeschbury@acluohio.org](mailto:gaeschbury@acluohio.org).

Hello

- My Name is Daniel Rogers. Ima writing this letter in an attempt to enlighten law makers on the effect of Human Beings not being able to afford bond. In this letter I'm show How I became a felon, and the snow ball effect it had on my life ever since. I am also going to reveal my experience with the county jail and penal system in order to give you a better picture on the types of obstacles a person in my situation will have to overcome. If a person isn't strong enough to do so will reoffend if not careful simply because it's easier to give up. In the end of the letter it has a bit of successful ending and why I became involved with the ACLU as part of my determination to help change the way people view offenders as statistics instead of Real Pupils with Day to Day responsibilities.
- My first felony on my record was a bitter pill to swallow. Not because I got caught either. More so because I didn't do it. Unfortunately, I was evicted from my apartment for the non-payment of rent. My children's mother and I decided not to separate we shared 5 children together. Our mother had their doors open but neither was willing to allow all of us together. So, we got a Hotel that I could afford. Little to my knowledge it was a High drug activity Hotel. The police knew it. Guys would rent a room overnight sell their drugs and be gone in the morning. For me at the time it was home. The police never believed that, they raided my room three times. Never found anything. The last time they raided it they were pissed I was told someone sold drugs to another person an even thou the other person sold it that they knew the drugs was mine. I was placed under arrest while the person who sold it didn't go to jail that night. I was taken to the Coleraine police department the officer said He know I can beat the case but if I did, they would find something else to pin on me. With no money to bond out let alone a Lawyer, plus out of fear of thee officer I now have a F4 trafficking on my record which I received 3yrs of probation for after doing 6months in River City. I felt defeated I know longer had regards for the Law nor the system. Here I was 20 Years old a Felon victimized by the System.
- I tried to make the best of it. I study culinary arts which I graduated from but never received my Certificate. I also learned about thinking errors. Prior to I had petty misdemeanors on my record like Marijuana, and I D.V. I received for arguing with my sister. But a felony for something I didn't do was un heard of. 6 moths later I got out. My children's mom had managed to receive section 8 Thank God. She manages to uptrain a house. Things was looking up I thought. I couldn't find a decent Job to save my life because of my record I was told I was frustrated. But I couldn't give up. I Landed a job at Frisch's as a cook 7.90 an hour I took it. A Few moths go by a while on probation my Middle-aged son wasn't doing so great in school. their mother wants me to handle it I blew her off. After two more weeks the problem got worst. I would have talks with him, make him stand in a corner, ground him to his room nothing was working. I got a call from his school bus company sating one more problem and my son would be kicked of the bus for the rest of the year. Later on, the same Day His school called as well with the same promise. That did it I decided to take action I spanked my son. Thinking that's the right thing to do. Boy was I wrong. I took my son to school the next day when I went to pick him up, he wasn't there I was in

the room with a councilor questioning me about the incident I left I thought to myself not again. The police called my phone asking me to come in for questioning. I went and told the truth well I was placed under arrest and charged with count 1 child endangerment and count 2 Domestic Violence. Since I had a prior D.V this makes this a Felony my bond was 50,000 no ten percent. And since I was on probation a holder was placed on me as well. I wasn't going to Lay down this time I thought. I was facing 8yrs total for whooping my own son. The school press them as did the officers. My offer was 1yr in prison or go to trial. I wouldn't dare take a deal for raising my son we went to trial 6 months later I Lost. My sentence 3yrs in prison. I had lost everything and picked up two more charges because I wouldn't except one. 18 months into my sentence my children mother had given my troublesome son up for adoption and quit answering my calls. I was placed in prison with real criminals and violence surrounding me miles away from home for whooping my son. I was feed up.

- I missed three years and a half I missed years out my children's life their mother left me. She gave up Honestly, I did too for a While. I was released placed on parole in a Half way House I had to start all over. I Did manage to pick up a trade while incarcerated. Barbering I got out before I could graduate or take my state test. I did graduate when I came Home. I found a job for a temp Service called select. I didn't know you meet at the office and they took you on a grey hound to the Job and back. I was working three weeks when. The Half-way house was asking me about my job details I told them one problem the job was in Kentucky. Even if the job takes you over there and back, I'm in volition of parole little did I know back to prison I go this time 100 days. Damn I thought I'm back in prison for going to work. This is it I give up I'm going to provide for my children by any means now no matter what. After 100 days they let me out 3 felony's later no job experience I couldn't find a Job.
- I found a job and an apartment in a rough neighborhood. I could hear gun shots every night from my bedroom window. One night I was walking home from work and gun shoots went off I started running and a cop stop me. He ran my record than searched the area which was an apartment complex with over 50 apartments. He found a gun. I told him it wasn't mine he didn't believe that. I was arrested for aggravated assault and having a weapon while being a felony. I was facing 17yrs. Put on 100,000 dollars bail no ten percent. The aggravated assault charge got drop the witness didn't testify It was me. The gun charge however was different. I sat in the county for 9 months and had a DNA done on the weapon no DNA evidence. The cops didn't care 15 months or go to trial I was told. My public defender instructed me he believe I didn't do it but an officer put in the report they seen me throw the weapon. And in another report, he seen me toss the weapon. It didn't matter he said who would you believe an officer of the law of a three-time felony I took the 15 months in prison. My apartment and everything I worked for my Job all gone.
- I Lost it all again I was tired. Thinking wouldn't no one Hire me now four felonies I was Now in OTR the roughest neighborhood in Cincinnati. I blamed the system than it happened 15 bike officers stormed the street I walked to a friend car and was followed. The Tags was bad and they were illegal parked they knock on the window saw weed and we were pulled out the car. The vehicle was searched and they found a weapon. I was placed under arrest. 30 ,000 dollar bond

no ten percent. I sat in jail 90 days. A Friend of mine put up property to get me out. I found a job at a chemical Plant AZZ. I saved up enough money to get me a Lawyer and apartment. At my last court date, I was told take two years I instructed them I had just got enough money to get a Lawyer they told me if I did, they would send my case federal. I called their bluff. The next court date my Lawyer told me there was nothing he could do my case went federal. I was placed under arrest with a Federal Charge I sat in Butler county 10 days. And was lucky enough to qualify for their ankle monitor bond. I Lost my Job my Car and my House but I can't give up I thought.

- I went to a Temp service who placed you on jobs until your record come back and I was let go of three times. Then they called about Meijer Tool being a felony friendly place and my temp service wanted me to work there I went. It's been a Year and I'm a Supervisor currently work at Meijer tool. I'm making 17 dollars and Hour I'm currently Married with 2 cars and I Live in a 2 family House with a Five car garage my case is still Ongoing but. I have things I never had before like 401k and Life Insurance policy's Health vision and Dental benefits I'm currently Happy now.