

# AN ACT

To amend section 2937.03, to enact new section 2937.32 and section 2937.222, and to repeal section 2937.32 of the Revised Code to enact procedures to implement the amendment to Section 9 of Article I of the Ohio Constitution adopted in the November 1997 general election pursuant to which a judge may deny bail to a person accused of specified offenses.

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. That section 2937.03 be amended and new section 2937.32 and section 2937.222 of the Revised Code be enacted to read as follows:

Sec. 2937.03. After the announcement, as provided by section 2937.02 of the Revised Code, the accused shall be arraigned by the magistrate, ~~or~~ clerk, or prosecutor of the court reading the affidavit or complaint, or reading its substance, omitting purely formal parts, to ~~him~~ the accused unless ~~such~~ the reading of the affidavit or complaint is waived. The judge or magistrate shall then inquire of the accused whether ~~he~~ the accused understands the nature of the charge. If ~~he~~ the accused does not indicate understanding, the judge or magistrate shall give explanation in terms of the statute or ordinance claimed violated. If ~~he~~ the accused is not represented by counsel and expresses a desire to consult with an attorney at law, the judge or magistrate shall continue the case for a reasonable time to allow ~~him~~ the accused to send for or consult with counsel and shall set bail for ~~such~~ the later appearance if the offense is bailable. If the accused is not able to make bail, bail is denied, or the offense is not bailable, the court or magistrate shall require the officer having custody of the accused ~~forthwith~~ immediately to take a message to any attorney at law within the municipal corporation where the accused is detained, or immediately to make available to the accused ~~forthwith~~ use of a telephone for calling to arrange for legal counsel or bail.

Sec. 2937.222. (A) On the motion of the prosecuting attorney or on the judge's own motion, the judge shall hold a hearing to determine whether an

accused person charged with aggravated murder when it is not a capital offense, murder, a felony of the first or second degree, a violation of section 2903.06 of the Revised Code, or a fourth degree felony OMVI offense shall be denied bail. The judge shall order that the accused be detained until the conclusion of the hearing. Except for good cause, a continuance on the motion of the state shall not exceed three court days. Except for good cause, a continuance on the motion of the accused shall not exceed five court days unless the motion of the accused waives in writing the five-day limit and states in writing a specific period for which the accused requests a continuance. A continuance granted upon a motion of the accused that waives in writing the five-day limit shall not 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 shall 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 judge may 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 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 pursuant to this section to determine whether to continue that order.

(B) No accused person shall be denied bail pursuant to this section unless the judge finds by clear and convincing evidence that the proof is evident or the presumption great that the accused committed the offense described in division (A) of this section 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.

(C) The judge, in determining whether the accused person described in division (A) of this section 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, shall consider all available information regarding all of the following:

(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 the arrest of the accused, 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 the laws of this state, another state, or the United States or under 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.

(D)(1) An order of the court of common pleas denying bail pursuant to this section is a final appealable order. In an appeal pursuant to division (D) of this section, the court of appeals shall do all of the following:

(a) Give the appeal priority on its calendar;

(b) Liberally modify or dispense with formal requirements in the interest of a speedy and just resolution of the appeal;

(c) Decide the appeal expeditiously;

(d) Promptly enter its judgment affirming or reversing the order denying bail.

(2) The pendency of an appeal under this section 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 in accordance with this section. If, during the pendency of an appeal under division (D) of this section, the court of common pleas sets aside or terminates the order denying bail, the court of appeals shall dismiss the appeal.

(E) As used in this section:

(1) "Court day" has the same meaning as in section 5122.01 of the

Revised Code.

(2) "Fourth degree felony OMVI offense" has the same meaning as in section 2929.01 of the Revised Code.

Sec. 2937.32. 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 shall order the accused to be detained.

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SECTION 2. That existing section 2937.03 and section 2937.32 of the Revised Code are hereby repealed.

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*Speaker* \_\_\_\_\_ *of the House of Representatives.*

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*President* \_\_\_\_\_ *of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor.*

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The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

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*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the  
\_\_\_\_ day of \_\_\_\_\_, A. D. 20\_\_\_\_.

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_