



Commenting on Proposed Changes to the Pennsylvania Rules of Criminal Procedure

Recently the Supreme Court of Pennsylvania published proposed changes to the bail and detainer rules. The proposed changes, if adopted and followed, would do some real good — they could reduce pretrial detention in Pennsylvania. We hope that the Supreme Court adopts most of these proposed changes.

But some of the proposed changes could do real damage. One change would expand the purposes of bail so that magistrates can incarcerate anyone at risk of self-harm. This would threaten the liberty and well-being of people with mental and physical disabilities including substance use disorder.

Here is a link to proposed rules:

<https://www.pacourts.us/Storage/media/pdfs/20211228/150910-publicationreportrebail.pdf>.

This document highlights the good and bad in the proposed changes, and some takeaways.

How to Provide Public Comments

Deadline March 8, 2022

Email or send a letter to

Address: Joshua M. Yohe, Counsel
Criminal Procedural Rules Committee Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635
FAX: (717) 231-9521
criminalrules@pacourts.us




Questions?

Contact Nyssa Taylor, an attorney at the ACLU of Pennsylvania, at ntaylor@aclupa.org or 856-244-1136.


Bail

Rule	What it says	Does it potentially help reduce the number of people incarcerated pretrial or under supervision?
520.11	Prohibits magistrates from setting cash bail for the “sole purpose of detaining a defendant until trial.”	✓ Yes.
520.11	Requires that magistrates state, in writing, the specific risk that cash bail is intended to address, and that cannot be addressed by other conditions.	✓ Yes.
520.15	Creates condition review hearings within 48 hours for anyone jailed on a condition of bail and gives people lawyers at the hearing.	✓ Yes.
520.16	Creates detention hearings for anyone denied bail altogether and gives people lawyers at the hearing.	✓ Yes.
520.1	Expands the purpose of bail to protect the person from self-harm.	✗ NO. This would allow magistrates to incarcerate anyone they believe to be at risk of self-harm. This will disproportionately harm people with substance use disorder and other physical and mental disabilities.
520.1	Expands the purpose of bail to protect the integrity of the judicial system.	✗ NO. This vague, broad language would allow magistrates to incarcerate anyone.
520.1	Expands the types of burdensome conditions that magistrates can set. These conditions include: electronic monitoring, requiring employment or an educational program, refraining from alcohol use, etc.	✗ NO. This would give magistrates more ammunition to supervise and control people on release. It means people have more chances of slipping up and going back to jail.
520.18	Defines the responsibilities of pretrial services.	
520.19	Allows pretrial risk assessment tools and provides guidelines on how they can be used.	

County Probation and Parole

Rule	What it says	Does it potentially help reduce the number of people incarcerated pretrial or under supervision?
708.1	Prevents county probation officers from lodging a detainer unless the defendant poses a risk to public safety or flight risk. Prohibits county probation officers from lodging detainers for new arrests unless the P.O. has additional evidence of a separate violation prohibit detainers for new arrests alone unless the P.O. has additional evidence of a separate technical violation. 	 Yes.
708.1	...BUT it allows probation officers to lodge a detainer if the “violation creates an ongoing risk to the public’s safety, to the defendant’s safety, or of non-appearance at the revocation hearing.”	 NO. It allows probation officers to incarcerate people affected by mental illness and addiction.
708.1	Requires courts to hold preliminary revocation hearings within 14 days for people incarcerated on detainers. If the hearing is <i>not</i> held within 14 days, the detainer automatically expires.	 Yes.

Summons and Arrest Warrant Procedures

Rule	What it says	Does it potentially help reduce the number of people incarcerated pretrial or under supervision?
1003	Aligns Philadelphia's summons practices with the rest of the Commonwealth's practices. Affirms that Philadelphia police can and should issue summons instead of arresting people for most misdemeanor offenses.	 Yes.

Takeaways

DO NOT...

- Expand the purposes of bail to include the risk of self-harm.
- Expand the purposes of bail to include the integrity of the judicial system.



DO...

- Support the proposed changes to cash bail rules.
- Support the proposed changes to detainer rules.

People with disabilities or substance use disorders need access to treatment in their communities, not incarceration.