ACLU Pennsylvania

MEMORANDUM

TO: The Pennsylvania Senate

FROM: Elizabeth Randol, Legislative Director, ACLU of Pennsylvania

DATE: March 26, 2025

RE: OPPOSITION TO SENATE BILL 490 P.N. 444 (ROBINSON)

Bill summary: SB 490 (PN 444) would create a new section under Title 42 (§ 5762. Bail of persons posing threat to public safety) to prohibit judges from releasing a defendant deemed a "threat to public safety" on non-monetary bail. In other words, such defendants could not be released on their own recognizance, unsecured bail, or a bail deposit program administered by a county. SB 490 defines a "person posing a threat to public safety" as:

1. A person charged with committing a violation of 18 Pa.C.S. § 2702.1 (relating to assault of law enforcement officer) or 18 Pa.C.S. § 5104.2 (relating to evading arrest or detention on foot).
2. A person charged with committing a crime of violence under 42 Pa.C.S. § 9714(g) and in the last five years, was incarcerated following a conviction for committing a crime of violence or was adjudicated delinquent for a similar offense; or
3. A person charged with the manufacture, delivery, or possession with intent to manufacture or deliver, a controlled substance (violating section 13(a)(30) of the Controlled Substance Act), or an attempt, conspiracy or solicitation to violate this section, and probable cause to believe that the substance weighs 10 grams or more and contains fentanyl, a fentanyl derivative, or carfentanil.

On behalf of over 100,000 members of the ACLU of Pennsylvania, I respectfully urge you to oppose Senate Bill 490.

SB 490 is facially unconstitutional.

If enacted, SB 490 would be unconstitutional for the following reasons:

- SB 490 would violate Article I, § 14 of the Pennsylvania Constitution, which expansively provides that "[a]ll prisoners shall be bailable by sufficient sureties" except for certain specified exceptions. Our constitution operates from a strong presumption of freedom, with a high threshold before the state can imprison a person. Because SB 490 would categorically prohibit non-monetary bail based solely on charges filed, it would **unconstitutionally jail people *pre-conviction*** with no ability for a judge to consider the specific circumstances of the defendant and the likelihood they will return for a future court date.
- SB 490 would violate Article V, § 10(c) of the Pennsylvania Constitution, which grants the Supreme Court "exclusive authority to promulgate rules of procedure for the courts."[1] SB 490 amounts to an attempt by the Legislature to limit or interfere with the court's constitutional purview by unilaterally preventing judges from releasing a defendant on non-monetary bail—defendants they may otherwise release. Such a fundamental change to the manner in which courts can set bail **must be made by the Pennsylvania Supreme Court**.

[1] *League of Women Voters of Pennsylvania v. DeGraffenreid*, 265 A.3d 207, 241 (Pa. 2021).

SB 490 would further exacerbate economic and racial disparities in the criminal legal system.

One of the most shameful practices in the criminal legal system is the addiction to cash bail. Non-monetary bail is woefully underutilized, even when it would be sufficient to guarantee a person's future court appearance. Pennsylvania is no different. According to our 2021 report, *Broken Rules: How Pennsylvania Courts Use Cash Bail to Incarcerate People Before Trial*:[2]

1. Magisterial district judges (MDJs) routinely set bail in amounts too high for people to afford. More than half of people assigned cash bail did not post it and remained incarcerated.
2. Cash bail is the most common type of bail set across Pennsylvania, and set nearly twice as often as release on recognizance (ROR), the least restrictive type of bail.
3. Some counties rarely assign release on recognizance.
4. MDJs impose cash bail more frequently and in higher amounts for Black people.

But no matter the crime charged, one thing remains true—cash bail keeps poor people and people of color incarcerated, while those with means can purchase their freedom.

SB 490 would not only **encourage the use of monetary bail**, exacerbating the disparate impact on lower-income defendants and people of color, it would continue to **ensure that people who "pose a threat to public safety"—as long as they have money—will be released**.

Even if enacted, SB 490 would have little, if any, meaningful effect on bail practices.

In a co-sponsorship memo for an earlier version of SB 490 from last session, the prime sponsor stated, "[c]urrently, there are no safeguards during the bail process that take into account the amount of fentanyl a person is in possession of [or] an individual's record of violent crime or propensity to commit such acts…" **This is not accurate.**

First, judges already routinely set restrictive bail for people accused of a second (or subsequent) crime of violence. As such, SB 490 would, at best, codify current, widespread practice.

Second, under Rule 523(a) of the Pennsylvania Rules of Criminal Procedure, courts must consider "[t]he nature of the offense charged," "[t]he defendant's prior criminal record" and "any other factors relevant to whether the defendant will appear as required and comply with the conditions of the bail bond."[3] These considerations would certainly capture the specific violations that define a "person posing a threat to public safety" under SB 490—and would arguably capture far more criteria than what SB 490 proposes.

For these reasons, we urge you to oppose Senate Bill 490.

[2] ACLU of Pennsylvania, Broken Rules: How Pennsylvania Courts Use Cash Bail to Incarcerate People Before Trial, (December 2021).
[3] 234 Pa. Code Rule 523(A).