



MEMORANDUM

TO: The Pennsylvania House of Representatives

FROM: Elizabeth Randol, Legislative Director, ACLU of Pennsylvania

DATE: November 12, 2021

RE: OPPOSITION TO HB 2039 P.N. 2385 (PENNYCUICK)

Bill summary: [HB 2039](#) (PN 2385) would amend the [Pennsylvania Crime Victims Act](#)¹ to:

- At preliminary arraignment, require police to provide the alleged victim's contact information to the magisterial district judge (MDJ);
- After the preliminary hearing, require MDJs to provide the alleged victim's contact information and a transcript of proceedings to the county court of Common Pleas;
- Provide the "right [for victims] not to be excluded [and] to offer comments" about a defendant's bail condition **at the time bail conditions are imposed** or at any subsequent proceeding where bail conditions may be modified;
- In cases that involve personal injury crimes, crimes of violence, or sexual abuse or exploitation of children, allow prosecutors or police officers to make an offer of proof in lieu of live testimony from the alleged victim.

On behalf of over 100,000 members and supporters of the ACLU of Pennsylvania, I respectfully urge you to oppose House Bill 2039.

HB 2039 would create delays in bail hearings, causing defendants to be incarcerated longer.

Currently, alleged victims *already* have the right to information regarding the grant or denial of bail to a defendant.² They do not, however, have the right to *participate* at **bail modification or determination hearings**—and for good reason.

Preliminary arraignments typically occur within 48 hours of arrest and occur at all hours of the day and night and bail is often modified soon after the preliminary hearing. Bail determination hearings are often held on short notice. Requiring alleged victims to be notified and given the opportunity to appear would delay many of these hearings and would limit opportunities for defendants to seek bail modification. These delays would ensure longer periods of incarceration in violation of the long-established right to speedy and prompt bail hearings, not to mention the protections under Pennsylvania's Rules of Criminal Procedure, which require judges to "conduct preliminary arraignments without unnecessary delay" and to "set bail without unnecessary delay whenever an out-of-county warrant of arrest is executed."³

HB 2039 would treat bail hearings more like criminal trials.

The Pennsylvania Constitution ([Article 1 § 14](#)) establishes that all prisoners are bailable. This is because the purpose of bail hearings is to ensure that defendants show up for court and to arrange for release *as long as they do not pose a flight or public safety risk*. As such, the court already considers the safety of the alleged victim and community at bail determination hearings. **Bail hearings, which are held at the earliest stage of**

¹ [18 P.S. § 11.201](#).

² [18 P.S. § 11.201\(2\)](#).

³ [Pa.R.Crim.P. 117\(a\)\(2\)\(b\) and \(c\)](#).

the process, are neither structured nor intended to determine guilt or innocence. As such, defendants are not entitled to the same robust due process protections, like the right to counsel or right to confront their accuser, that they receive later in the process, such as at trial. Ignoring these critical distinctions, the provisions under HB 2039 would treat bail hearings more like criminal trials.

HB 2039 would allow prejudicial information to be introduced at bail hearings.

HB 2039 would allow alleged victims to offer sworn testimony and prosecutors and police officers to introduce hearsay evidence on behalf of the alleged victim(s) if they are not present at the hearing. This is especially problematic, since HB 2039 includes no new procedures for how bail hearings would proceed under its provisions, such as the scope of testimony permitted by alleged victims; the standard of proof required at bail determination hearings; or whether defendants have the right to cross-examine statements introduced by alleged victims, police officers, and/or prosecutors (and therefore, whether defendants should have the right to counsel at those hearings).

Permitting this kind of prejudicial information at this stage of the process would unduly influence bail determinations, deprive defendants of their due process rights, and undermine the presumption that the defendant is innocent until proven guilty.

HB 2039 mistakenly assumes magisterial district courts are courts of record.

It is also worth noting that this bill mistakenly assumes magisterial district courts are courts of record—**they are NOT**. HB 2039 would require, after the denial of bail, that the contact information of the victim “shall be transmitted by the magisterial district court with the transcript of the proceedings to the court of common pleas at the conclusion of the preliminary hearing.” **MDJs keep no official transcripts** of bail hearings, preliminary hearings, or other events unless the defense attorney hires a stenographer.

However, should this legislation inadvertently force MDJs to keep transcripts of their proceedings, we would certainly support such a requirement.

For these reasons, we urge you to oppose House Bill 2039.