



MEMORANDUM

TO: The Pennsylvania House Judiciary Committee

FROM: Elizabeth Randol, Legislative Director, ACLU of Pennsylvania

DATE: November 8, 2021

RE: OPPOSITION TO HB 2046 P.N. 2355 (KLUNK)

Bill summary: [HB 2046](#) (PN 2355) would amend [42 Pa.C.S. §5741](#) to propose the following:

- Changes the definition of a “bail bondsman” from “a person who engages in the business of giving bail as a surety for compensation” to “a professional bondsman or a surety bondsman.”
- Defines “professional bondsman” as a person engaged in the “business of giving bail as a surety for compensation.”
- Creates a new definition of "surety bondsman" as “a person who engages in the business of giving bail as a surety without compensation in a judicial district for at least three defendants within 30 days” in separate criminal proceedings.
- Creates a new definition for "business of giving bail" or "business of a bail bondsman" to include “acting as a surety for a defendant, indemnifying a surety for a defendant or providing financial support for the release of a defendant on a monetary condition of release on bail with or without compensation to a defendant.”

On behalf of over 100,000 members and supporters of the ACLU of Pennsylvania, I respectfully urge you to oppose House Bill 2046.

The first example of a large-scale organized bail fund recorded in United States history was created over 100 years ago by the American Civil Liberties Union. In 1920, at the height of mass arrests during the Red Scare hysteria, the ACLU (only 8 months old at that point) announced the creation of a “radical bail fund” of \$300,000 established to free those detained under sedition laws. The ACLU National Bail Fund is often recognized as the first national bail fund.¹

Following in that tradition, today’s community bail funds are typically non-profit, charitable organizations that are community-supported and volunteer-driven. Bail funds raise money to post monetary bail for people detained pretrial—those who cannot afford to post bail or who may have been detained during [mass arrests](#) following protests—or to assist people held on federal immigration detainers. Community bail funds determine their own eligibility criteria and amount of bail they can support. Currently, there are over [90 community bail funds](#) across the U.S.² Pennsylvania is home to 8 of these bail funds (six pretrial and two immigration funds):

1. [Bukit Bail Fund of Pittsburgh](#)
2. [Dauphin County Bail Fund](#)
3. [Lancaster County Community Bail Fund](#)
4. [Philadelphia Community Bail Fund](#)
5. [Philadelphia Bail Fund](#)
6. [Reuniting Families Bail Fund of Montgomery County](#)
7. [Community Fund for Bond and Legal Support](#)
8. [Immigration and Advocacy Bond Effort](#)

¹ Steinberg, Robin (2018). “[Freedom should be free: A brief history of bail funds in the United States.](#)” *UCLA Criminal Justice Law Review*. 2: 79–95.

² National Bail Fund Network, [Directory of Community Bail Funds](#).

HB 2046 would require community bail funds to be licensed as professional bail bondsmen.

To obtain a Pennsylvania license as a [Professional Bail Bondsman](#), applicants must meet several requirements. These requirements are not only ill-suited to what community bail funds do, they would almost certainly guarantee the destruction of Pennsylvania's bail funds. Some of these requirements include:

- **Maintaining a physical office in every county where the person would post bail:** Operating and maintaining a physical office is not only unnecessary, but would likely be cost prohibitive for bail funds. Community bail funds occasionally collaborate to assist people detained in other counties and some funds are created ad-hoc in the aftermath of mass arrests following a protest. These situations would require either maintaining multiple physical offices or establishing a physical office for an ad-hoc fund.
- **License approval is dependent on approval letters from district attorneys, credit report scores and clean criminal records:** Many people who work for community bail funds are formerly incarcerated. In fact, their experience in the criminal legal system is often the *precise reason why* they choose to help fellow community members who are being detained without convictions. Requiring that they each produce a credit report; have no criminal record whatsoever; and get a DA letter would likely be fatal to all the community bail funds.

HB 2046 doubles down on an archaic system and would reinforce the practice of tethering occupational licenses to criminal records.

Doubling-down on requiring *more people* to become licensed bail bondsmen is a stunning embrace of a practice that is illegal in almost every other country in the world. “[P]osting bail for people accused of crimes in exchange for a fee, is all but unknown in the rest of the world. In England, Canada and other countries, agreeing to pay a defendant’s bond in exchange for money is a crime akin to witness tampering or bribing a juror—a form of obstruction of justice.”³

And it would be an unfortunate irony if the same Pennsylvania legislators who recently supported bipartisan occupational licensing reform, which specifically eliminated making many professional licenses dependent on a person’s criminal record, would now support HB 2046, as this bill would introduce a new standard for denying people the ability to bail out community members simply because they, too, have a shared experience in the criminal legal system.

With no discernible problems identified with community bail funds, and whether intended or not, HB 2046 would have the effect of keeping more poor people in jail.

Community bail funds are charitable organizations founded by volunteers and community members, many of whom have also been detained pretrial, established to get people out of jail who cannot afford to post bail. In addition to this critical service, bail funds often provide additional services for those who have been released. Their programs offer vital resources for many people who may not otherwise receive assistance or who may not accept assistance except from people in the community they trust.

As a reminder, the perils of our money bail system are legion. Cash bail:⁴

- **Is outlawed in every other country except the Philippines:** The United States is one of only two nations in the world that use cash bail; most other common law countries criminalize the practice of requiring money in exchange for pretrial liberty.
- **Leads to wealth-based detention:** Jailing people before they have been convicted or sentenced, solely because they cannot afford to post money bail, amounts to wealth-based detention that violates well-established norms of fairness and constitutional principles.

³ Liptak, Adam (2008-01-29). “[Illegal Globally, Bail for Profit Remains in U.S.](#)” The New York Times.

⁴ This list is derived from the ACLU of Pennsylvania, [Smart Justice—Ending Cash Bail](#).

- **Is the leading cause of the mass incarceration crisis in the U.S. and PA:** Nationally, [74%](#) of people held in jail have not been convicted of any crime. And in 2015, pretrial detainees constituted [62%](#) of the total jail population in Pennsylvania.
- **Has devastating consequences for individuals, families, and communities:** Even after only a few days in jail, people can lose their employment, their housing, custody of their children, and sometimes their lives.
- **Disproportionately affects people of color:** Judges are more likely to assign unaffordable bail to Black defendants than white and the odds of being detained pretrial are twice as high for Latinos than whites and 87 percent higher for Blacks than whites.
- **Undermines public safety:** Assigning cash bail to a defendant in Pittsburgh or Philadelphia increases the likelihood of recidivism by 6-9%. When detained for even 2-3 days on bail, low risk defendants were 40% more likely to commit new crimes than equivalent defendants held no more than 24 hours.
- **Negatively affects criminal case outcomes:** Pretrial detention is directly correlated to an increase in guilty pleas, as those who are detained pretrial are far more likely to accept guilty pleas than those who are not detained.

Cash bail allows people with financial means to purchase their freedom, while those without means remain incarcerated. Freedom from incarceration in the U.S. and in Pennsylvania often depends on one's wealth. **It is this pernicious system from which community bail funds seek to rescue people. And it is this life line that HB 2046 would invariably sever.**

For these reasons, we urge you to oppose House Bill 2046.