

March 3, 2022

VIA EMAIL

Joshua M. Yohe,  
Counsel Criminal Procedural Rules Committee  
Supreme Court of Pennsylvania  
Pennsylvania Judicial Center  
PO Box 62635  
Harrisburg, PA 17106-2635  
criminalrules@pacourts.us

Re: Comments to Notice of Proposed Rulemaking – Proposed Recission of Pa.Rs.Crim. 520-529 and Proposed Replacement of Pa.Rs.Crim. 520.1-19

Dear Mr. Yohe,

The Bail Project is a national nonprofit that provides direct services through our revolving charitable bail fund and advances progressive pretrial reforms through policy and legislative advocacy. We carry out our policy work at the federal, state and local levels and provide services in over 30 jurisdictions in 20 states across the country. Our work addresses the disproportionate impact that current pretrial systems across the county have on low-income and Black and brown communities.

Through a reliance on cash bail and pretrial detention, our country has failed to guarantee constitutional rights such as equal protection, due process, and the presumption of innocence. Many of the Committee's proposed changes are a positive step forward, but as currently proposed, we believe they are inadequate. As a result, we urge you to consider the following recommendations to advance fairness and equal treatment of all Pennsylvanians in the criminal legal system:

## 1. Restrict the Conditions Under Which Bail can be Imposed

Criminal Rule 520.1 would significantly alter the intended purpose of bail to include not just future appearance and public safety but also **“the protection of the defendant from immediate risk of substantial physical self-harm”** and **“the integrity of the judicial system.”**

Allowing magistrates to incarcerate anyone they believe to be at risk of self-harm would permit magistrates to incarcerate people with mental and behavioral health conditions or with physical disabilities on the basis of that need or disability. This calls on untrained judicial officers to make determinations about a person's mental or physical wellbeing that they are unqualified to make while potentially contributing to the disproportionate and inappropriate detention of people with mental and behavioral health conditions and physical disabilities.

Pennsylvania jails are already struggling to support people with mental illness or substance use disorders. In 2014, nearly a third (28%) of those incarcerated across Pennsylvania suffered from some form of mental illness. Pennsylvania has ranked as one of the worst states in the nation for mental health bed wait times, leaving those accused of crimes to languish in jail without proper medical intervention, exacerbating mental health symptoms. In fact, many people facing minor charges have spent longer in jail waiting to go to a hospital than the time they would have served had they been sentenced.

Additionally, allowing magistrates to incarcerate any person to assure the “**integrity of the judicial system**” is vague and needs a better definition. Without clarity, this change could lead to the rampant misuse of pretrial detention.

## **2. Limit the Use of Liberty Restricting Conditions of Release**

Criminal Rule 520.10 would offer magistrates an extensive list of possible non-monetary conditions that they could assign to people pretrial. These conditions include a requirement that an accused person maintain employment or attend an educational program, comply with a curfew, refrain from alcohol use, comply with an existing treatment plan, or be electronically monitored, among others. If an accused person violates these conditions of release, the magistrate may revoke their bail and incarcerate them.

Conditions of pretrial release are an important part of the pretrial system. They ensure that people accused of crimes can return to their families, rather than remain in jail, through the duration of the pretrial process. It is important to ensure that conditions of release are appropriate and do not place an undue burden on the accused and their family.

The conditions of release assigned by magistrates should be determined on a case-by-case basis, accounting for individual circumstances. The vast majority of people eligible for pretrial release should be released on the least restrictive conditions necessary such as release on personal recognizance or unsecured appearance bonds without supervision and should be paired with supportive services such as text court date reminders, transportation assistance, and access/referrals to support services.

Some conditions of release, such as electronic monitoring (EM), are alternative forms of confinement or surveillance. Electronic monitoring shifts jail cells into our communities by imposing onerous restrictions to those presumed innocent under the law with little evidence of their efficacy for such a population. There is little evidence that EM prevents someone from willfully avoiding prosecution (i.e., flight) or causing harm to the community (i.e., committing new offenses) while awaiting the outcome of their case. Furthermore, there is evidence that electronic detention doubles the risk of recidivism. Electronic monitoring also has a “net-widening” effect, pulling people deeper into the system due to their being subject to more conditions of supervision and being more likely to accrue technical violations. Additionally, EM has been shown to contribute to challenges in obtaining and retaining employment and has been found to have negative effects on parenting, social relationships, and community involvement.

## **3. Prohibit the Use of Racially Biased Pretrial Predictive Algorithms.**

Criminal Rule 520.19 permits courts to adopt pretrial predictive algorithms, also known as pretrial risk assessment tools, and creates guidelines for their use.

Despite best intentions, pretrial predictive algorithms fail to answer or inform the legal questions before the court during initial appearance. Specifically, they do not provide objective information about whether someone will return to court or whether a person poses a risk to the public. Additionally, pretrial predictive algorithms: perpetuate historical and structural racial and ethnic disparities; rely on biased and outdated data; promote inflated perceptions of a person's "riskiness;" and contribute to worse outcomes for Black and brown people. Pretrial predictive algorithms have no place in a criminal legal system that values individual responsibility and due process.

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I am happy to discuss these recommendations further, provide additional information, and to answer any questions the Committee may have. I thank you for your time and look forward to working with the Committee in the future.

Respectfully,

A handwritten signature in cursive script that reads "Twyla Carter".

Twyla Carter  
National Legal and Policy Director