Allegheny Lawyers Initiative for Justice
A coalition committed to criminal justice reform
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Dear Judge Pappas:

On behalf of the Allegheny Lawyers Initiative for Justice (ALIJ), I write to submit comments on the second draft of the proposed Local Rules for Bail.

First and foremost, we applaud the Subcommittee's Work. If enacted, the rule changes will materially advance the goal of making the local criminal justice system more equitable – particularly for the financially poor defendants who traditionally have remained incarcerated pretrial for no reason other than that they could not afford to pay bail. We've seen firsthand the collateral consequences of pretrial incarceration: the jobs lost; the families who lost their housing; the children who lost their mother or father for months or years. We've experienced the heartbreak of watching our incarcerated clients' mental health deteriorate as they wait for months or years for their case to resolve. The more equitable approach reflected in these rule changes will limit the disruption caused by unnecessary pretrial incarceration – and in turn make our communities safer and healthier.

With that in mind, we offer the following comments and feedback on the proposed rule changes:

All.C.R.Crim.P. 523.3. Considering Harm to the Accused as Additional Release Criteria

When enumerating the items in reference to "would be likely to cause undue harm to," we recommend that the Committee add the following: "the defendant's ability to financially support or provide care for dependents or other family members." This is perhaps implied within the existing language, but given the import of this principle, we think it better to make it explicit.

Also, for clarity purposes, we suggest that the Committee substitute the word "health" for "ability" when referring to "the defendant's mental, emotional or physical ability."

As a final comment on this rule, we believe this to be one of the most important suggested changes. When deciding bail, courts are overly influenced by the worst-case scenario: what if this defendant commits a violent crime if I release them? And what if the media then writes about my bail decision? Based on that worst-case scenario, courts are often overly conservative when setting bail, which results in the unnecessary pretrial incarceration of many defendants who are not a proven threat to the community. But the worst-case scenario is statistically extremely unlikely to occur.[1] At the same time, courts often don't take into account the consequences of pretrial incarceration to the accused and their family. Study after study shows that pretrial incarceration can have severe, life-changing consequences for the defendant and their family.[2] The aggregate effect of unnecessary pretrial incarceration, in turn, negatively impacts our local communities. Making consideration of harm to the accused an explicit factor in the bail decision is a welcome step toward correcting this imbalance.

All.C.R.Crim.Pa. 520.2. Denial of Bail Standards and Procedures

Concerning the requirement set forth at (c)(2), which requires that the judge "[m]emorialize these factual findings and the reasons for denying bail in writing," we suggest that the meaning of this requirement be fleshed out in the Comment to the Rule. If 'memorialize in writing' simply involves checking a box, that's not particularly meaningful or helpful. In our opinion, the written record justifying the denial of bail must, at minimum, enumerate the case-specific details and reasons underlying the decision. This issue could also be addressed through judicial education and accountability measures.

All.C.R.Crim.P. 524.1. Least Restrictive Types and Conditions of Release on Bail Available, Additional Grounds for a Preventive Detention Review Hearing

Prompt scheduling of a preventive detention review hearing is important. We do not suggest any specific change to the rule language. We do write, however, simply to note the following: given that the defendant is entitled to review of the initial bail determination within 72 hours, there is a concern that the judge making the initial bail decision – who is aware that a Common Pleas Court judge can decide to grant release later – may decide to err on the side of not releasing a defendant rather than incur the public opinion risk of releasing a defendant charged with a violent or high-profile offense. Perhaps this concern can be addressed through judicial education concerning the fact that even a brief period of pretrial incarceration may be life changing or the implementation of accountability measures.

All.C.R.Crim.P. 540.1. Right to Counsel at Preliminary Arraignment.

Our comment concerning this rule relates to ensuring that defendants can exercise their right to be represented by counsel of their choosing. While we do not suggest any specific change to the rule language, our comment perhaps could be addressed in the Comments to the Rule or other measures.

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[1] *See* THE PROBLEMS WITH RISK ASSESSMENT TOOLS, New York Times, July 17, 2019 (link to article available here: https://www.nytimes.com/2019/07/17/opinion/pretrial-ai.html).

[2] *See* JUSTICE DENIED: THE HARMFUL AND LASTING EFFECTS OF PRETRIAL DETENTION, Vera Institute of Justice Report, April 2019 (link to study available here: https://www.vera.org/downloads/publications/Justice-Denied-Evidence-Brief.pdf).

If you have a right to counsel, you also have the right to retain counsel of your choice. To meaningfully implement that right, the Court needs to address the scheduling and logistical issues that make it difficult to impossible to predict when the arraignment will take place in the City of Pittsburgh – which in effect almost always prevents private counsel from being present for their client's arraignment at the Pittsburgh Municipal Courts Building. We understand that in many cases, speed is an important factor when it comes to the arraignment, and that a defendant will want to be released (assuming that will occur) as soon as possible rather than see the process delayed as they work to retain counsel. But there are other cases when a defendant may want counsel of their choosing to represent them at the arraignment. For example, in many cases a defendant turns themself in on an outstanding arrest warrant. In those cases, the defendant often retains counsel before the preliminary arraignment. The lack of a consistent arraignment schedule should not prevent that defendant from having counsel of their choice – who will already be familiar with the defendant's relevant background and history – represent them at the arraignment.

All.C.R.Crim.Pa. 520.2. Denial of Bail Standards and Procedures

The Committee should consider defining this phrase: "evidence … that is encompassed in the criminal rules addressing release criteria …." The phrase's meaning is not immediately apparent.

All.C.R.Crim.P. 536.1. Procedure for Requesting Issuance of a Bench Warrant for Violation of Conditions of Bail Bond.

We believe that the procedure outlined here allowing private individuals to request the issuance of a bench warrant, which a judge can then immediately approve in an *ex parte* hearing, should be stricken. The process outlined here likely violates an accused's right to due process as it does not allow for representation by counsel at the *ex parte* hearing, does not allow a defendant to be heard at the hearing, and does not define the standard of proof governing the hearing. The process is also subject to abuse as a private citizen is not beholden to the same standards and accountability measures that the police and District Attorney's Office are subject to.

The procedure is well-intentioned. Perhaps the underlying issue can be addressed through other measures.

Sincerely,

Rob Perkins

Rob Perkins
Allegheny Lawyers Initiative for Justice