

SUPREME COURT OF PENNSYLVANIA

In Re: Order Revising the Comment to Rule 523 of the Pennsylvania Rules of Criminal Procedure

Supreme Court of Pennsylvania (June 15, 2016)

SUMMARY

This document is the Pennsylvania Criminal Procedural Rules Committee's Final Report explaining a revision to the Comment to Pennsylvania Rule of Criminal Procedure 523. The revision clarifies that risk assessment tools may be considered in bail determinations but may not be the exclusive means of making the decision.

CASE DETAILS

COURT	Supreme Court of Pennsylvania
WRITING FOR THE COURT	Per curiam
JURISDICTION	Pennsylvania
DECIDED	June 15, 2016
DISPOSITION	approved
PROCEDURAL POSTURE	The Supreme Court of Pennsylvania approved a revision to the Comment to Pennsylvania Rule of Criminal Procedure 523 concerning the use of risk assessment tools in bail determinations, effective October 1, 2016.
PRECEDENTIAL VALUE	Nonprecedential administrative rulemaking report; the report expressly cautions that the Supreme Court does not adopt the Committee's explanatory Final Reports.

TOPICS

[bail](#) [criminal procedure](#)

PRACTICE AREAS

[criminal procedure](#) [pretrial release](#) [bail](#)

QUESTIONS PRESENTED

1. Whether Pennsylvania Rule of Criminal Procedure 523 permits consideration of risk assessment tools in making bail determinations.

2. Whether the Comment to Rule 523 should clarify that a risk assessment tool may not be the exclusive means of reaching a bail decision.

HOLDINGS

1. The revision to the Comment to Rule 523 recognizes that the rule does not forbid consideration of a risk assessment tool in determining bail, but the tool may not be the exclusive means of reaching the bail decision.

KEY QUOTATIONS

“Therefore, the Comment to Rule 523 has been revised to state that the rule does not forbid the use of a risk assessment tool but that the tool must not be the only means of reaching the bail decision.” (Final Report at 2-3)

FACTUAL BACKGROUND

The First Judicial District was developing a risk assessment tool to assist magistrates and judges in determining whether defendants should be detained or released subject to various conditions. The proposed tool used historical Philadelphia data and factors such as criminal history, age at first adult arrest, prior incarceration, current and new charges, and prior incarceration length to estimate the risk of misconduct during pretrial release. The Committee considered whether the rules should establish standards for permissible tools and concluded that the validity of a particular tool's methodology would require case-by-case factual assessment.

PROCEDURAL HISTORY

The Criminal Procedural Rules Committee recommended revising the Comment to Rule 523 after representatives of the First Judicial District requested clarification regarding the use of risk assessment tools in setting bail. The Supreme Court approved the revision on June 15, 2016, effective October 1, 2016.

DISPOSITION

approved