

# 2020-2021 PACDL Platform

## 1. Appellate (2018; Rev. 2019)

PACDL supports the addition of eight judges to the Superior Court. PACDL supports the idea that Superior Court judges should be available regionally in the District in which they assume office. Each District should have at all times a Judge assigned to deal with emergency matters. Furthermore, PACDL supports merit selection of judges.

## 2. Asset Forfeiture Reform (2018)

PACDL supports civil asset forfeiture reform legislation that would include, but not be limited to, the following principles: 1) No property shall be forfeited unless the property owner is first convicted of a crime and has exhausted all appellate avenues; 2) Law enforcement agencies shall not recognize a direct financial incentive to seek forfeiture; 3) Local and state law enforcement shall be prohibited from participating with federal agencies' equitable sharing program that allows pursuit of federal forfeitures; 4) Free legal representation for the indigent shall be provided in civil asset forfeiture proceedings; 5) Individuals subject to civil asset forfeiture actions may request a prompt hearing to contest the seizure of their funds; 6) State and local law enforcement shall report annually their civil asset forfeiture seizures ; 7) Property seized and stored pending disposition of the forfeiture shall be efficiently and securely stored at the expense of the Commonwealth and no costs for storage shall be assessed to a claimant when property is returned; and 8) Any asset that is reserved to fund a criminal defense as guaranteed by the Sixth Amendment to the United States Constitution and Article 1, Section 9 of the Pennsylvania Constitution shall not be subject to forfeiture regardless of the source or status of the asset.

## 3. Bail Reform Plank (2018; rev.2020)

Consistent with the Eighth Amendment of the United States Constitution, due process and Supreme Court precedent, pretrial liberty must be the norm and detention prior to trial the carefully limited exception.<sup>i</sup> PACDL endorses pre-trial detention reforms to protect due process, preserve liberty, and secure, where necessary, those who must be restrained under the least restrictive conditions.

### *Comment:*

Pretrial detention exacts a high price both fiscally and personally causing job and housing loss, strained familial relationships, as well as loss of freedom. Pretrial detention threatens the presumption of innocence by leveraging guilty pleas. It serves to lengthen sentences and is unfairly administered against the economically and racially disadvantaged. Monetary bail should be the last resort, not the first.

### 1. Means of Setting Bail:

- a. Wealth cannot be the sole factor determining whether a defendant is released prior to trial.<sup>ii</sup>
- b. Courts should be prohibited from imposing a financial condition of release that results in the pretrial detention of a defendant solely due to the defendant's inability to pay and when nonmonetary conditions will suffice to assure the defendant's appearance.

- c. Conditions such as GPS monitoring and electronic home monitoring deserve consideration, when absolutely necessary, over detention.
- d. Defendants should be detained only when a judicial officer finds clear and convincing evidence after a hearing the accused poses a significant flight risk or imminent harm to others.<sup>iii</sup>

2. Improved Pre-trial Services. PACDL endorses improved efforts to ensure appearance and avoid re-arrest by more robust, independent pre-trial services to do the following:

- a. Observe a defendant's right against compelled self-incrimination and right to counsel during any process where data related to pretrial release is acquired.
- b. Provide comprehensive, evidence-based recommendations for pre-trial release.
- c. Refer released individuals to supportive services, including employment and housing programs, medical and psychological treatment, legal services, and drug and alcohol treatment opportunities.
- d. Evaluate individuals' eligibility for diversionary programs such as ARD and treatment courts.
- e. Remind released individuals of court appearances.

3. Administrative Reforms.

- a. Commercial sureties should be abolished as they are an invitation to corrupt relationships with attorneys and help to preserve the current system of monetary bail.
- b. Defendants should receive credit for all significant restriction of liberty including home confinement against a future sentence.
- c. Arrested individuals brought before a Magisterial District Judge should be provided the opportunity for counsel prior to preliminary arraignment, an immediate appeal of the bail determination and a bail review hearing within 48 hours if the defendant is being detained because of an inability to pay the monetary condition of bail.

#### **4. Death Penalty (2018)**

PACDL has long opposed the penalty of death as a criminal sanction. Every significant study of Pennsylvania's capital punishment system has concluded that it is severely flawed, unreliable, and arbitrarily administered. PACDL also supports a moratorium on the state's use of the death penalty until such time that this cruel and unusual punishment is prohibited.

#### **5. DNA Testing (2019)**

PACDL strongly supports adopting adequate procedures for preserving biological evidence, making DNA testing available to the defense in every case regardless of the Defendant's financial resources, and allowing applications for post-conviction relief based on favorable DNA results.

#### **6. Expungement (2019)**

PACDL supports a change in the law of expungement to include, specifically, that any person, not convicted of an offense or otherwise has a right to expungement, shall be restored to the status the person occupied before the arrest, indictment or information. That person shall have the right to deny the occurrence of any arrest, indictment information or conviction of that offense. No person as to whom an Order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failure to acknowledge the arrest, indictment or information in response to any inquiry

made of the person for any purpose. It shall, further, be unlawful for any person or organization to request or report any information or material which has been expunged or ordered sealed by Order of Court.

PACDL supports a change in the law allowing limited access (sealing) of criminal convictions after a period of time of good behavior. After a period of five (5) years for misdemeanors, ten years for non-violent felonies and (15) years for violent felonies (with the exception of murder) the record shall be sealed and unavailable to anyone other than law enforcement for a specified purpose.

#### **7. Federal Sentencing (2018)**

PACDL supports Federal Sentencing Guideline reform, eliminating ‘amount of loss’ as the driving factor in economic crime, reducing compound upward adjustments generally, and providing for alternatives to incarceration for those who pose no threat to the public.

#### **8. Grand Jury (2018)**

PACDL supports reform efforts changing current practices to respect the rights of witnesses, counsel for participants and those accused of criminal behavior by the Grand Jury. PACDL supports actual notice and an opportunity to be heard before a participant is sworn to secrecy; PACDL supports active assistance of counsel for a witness as contemplated by the Grand Jury Act; PACDL supports reform to the ‘Report’ process, affording an aggrieved individual the opportunity to comment and respond to a report prior to its publication; PACDL supports that a Trial Court Judge presiding over a case brought by the Grand Jury have all authority over Grand Jury exhibits and transcripts; and PACDL supports a ‘stay’ procedure similar to 28 USC section 1826 – a stay shall be granted unless the appeal is frivolous or taken for delay.

#### **9. Immigrant Defense and Multi-Lingual Services (2018)**

PACDL supports efforts to treat immigrants with respect and dignity. PACDL also supports improvement of interpreter services for non-English-speaking defendants to ensure that their decisions are the product of a knowing, voluntary and intelligent understanding of the issues germane to their cases.

#### **10. Immigration (2020)**

PACDL recognizes that law enforcement officers including immigration officers engaged in immigration enforcement actions at or near court facilities have a chilling effect on immigrant residents, defendants, witnesses and victims who require access to Pennsylvania’s courts. PACDL disapproves of the service of process in the courthouse complex on individuals compelled to be in court. PACDL supports the implementation of court policies that:

1. Require officers engaged in immigration enforcement activities in or around court facilities to identify themselves to security personnel, in most counties, this would be the Office of the Sheriff;
2. Clarify that court personnel are not required to disclose citizenship or immigration status information about any person unless required by 8 U.S.C. 1373 or other statute;
3. Provide for training of court personnel concerning the different type of warrants, subpoenas, and court orders that may be presented to effect and arrest or to obtain records in immigration enforcement actions;

4. Clarify that court personnel shall not inquire about the immigration status of an individual unless required for the performance of the court personnel's regular duties;
5. Establish protocols for use by court personnel likely to receive in-person, written, telephonic or electronic requests for information related to immigration enforcement;
6. Require court personnel to inform and seek guidance from the presiding judge or administrative judge concerning the execution of any ICE "administrative" warrants or subpoenas; and
7. Require a judicial warrant before any detention or arrest by immigration enforcement officials - or court personnel acting upon their behalf.

### **11. Indigent Defense (2018)**

Pennsylvania's failure to provide any state-based funding for indigent defense must end. Individual defense counsel owes the same duty under the Sixth Amendment of the United States Constitution and Article I, Section 9 of the Pennsylvania Constitution to indigent clients as those who privately retain him/her. PACDL supports reforms that enhance the delivery of defense services to ensure this obligation is met.

### **12. Jury Instruction – Cross-Racial Identification (2018)**

PACDL supports legislation creating a standard criminal jury instruction about the empirically proven unreliability of cross-racial eyewitness identification. Such an instruction would ensure fundamental trial fairness for citizens accused of crimes.

### **13. Juvenile Justice (2018)**

PACDL believes detention is a last resort for juvenile offenders. PACDL supports efforts to develop alternative methods to address incidents involving parent/child disputes, school-based occurrences and events that occur in mental health facilities, hospitals, foster homes or other facilities designed to help the occupants.

### **14. Mass Incarceration Plank (2019)**

Mass incarceration at the pretrial and sentencing levels must end. Americans overwhelmingly support reducing prison populations. Consistent with the Eighth Amendment of the United States Constitution, Due Process and Supreme Court precedent, pretrial liberty must be the norm and detention prior to trial the carefully limited exception.<sup>iv</sup> The largest group of incarcerated individuals are those in pre-trial detention.<sup>v</sup> PACDL endorses pre-trial detention reforms to protect due process, preserve liberty, and secure, where necessary, those who must be restrained under the least restrictive conditions.

Mandatory minimum sentences imposed regardless of individual circumstances result in unjustly lengthy sentences and contribute to prison overcrowding. Unreasonable conditions of parole and probation create a spiral of incarceration, debt, unemployment, homelessness and reincarceration. Women, people of color, and the impoverished are uniquely and more harshly affected by the negative effects of incarceration. Private prisons exact financial gain from maintaining the status quo. The system that imprisons more individuals per capita than any nation on earth urgently requires reform.

*Comment:*

Pretrial detention exacts a high price both fiscally and personally causing job and housing loss, strained familial relationships, as well as loss of freedom. Pretrial detention threatens the presumption of innocence by leveraging guilty pleas. It serves to lengthen sentences and is unfairly administered against the economically and racially disadvantaged.

**15. Prison Reform (2018)**

PACDL supports the end to private prisons, jails and detention centers. We support prioritizing prevention and treatment over incarceration when tackling addiction and substance abuse disorder. Incarceration must be used only as a last resort to protect society.

**16. Probation (2018)**

PACDL supports probation reform that includes: 1) reducing the length of probation time served by defendants; 2) easing stringent and onerous reporting, drug urinalysis, and other programming requirements that are placed on individuals on probation; 3) eliminating supervision for individuals who have met all other conditions and only have outstanding fines, costs, and associated court fees; 4) eliminating the lodging of automatic detainers for technical violations; 5) authorizing judges to remove defendants from intensive county-supervised probation once certain conditions have been met, which could include successful program completion; 6) establishing maximum caseload standards for probation officers; 7) providing drug and alcohol identification and treatment training of probation officers to aid in referring probationers to appropriate treatment modalities; and 8) allocating additional funding to increase the number of social caseworkers to improve rehabilitation and re-entry outcomes.

**17. PCRA – Former Counsel (2018; Rev. 2019)**

PACDL supports amending the Rules of Professional Conduct to preclude prosecutors from interviewing a criminal defendant's prior lawyer in PCRA proceedings and from sitting at counsel's table with that lawyer during PCRA hearings. PACDL further supports amending the Rules of Professional Conduct to require prior criminal defense counsel to cooperate with PCRA counsel.

**18. Prosecutorial Discretion (2018)**

PACDL supports reform and the development of clearer standards for prosecutorial discretion in matters pertaining to criminal intent, mens rea, willful blindness, and quid pro quo.

**19. Sentencing (2018; Rev. 2019)**

PACDL is concerned that sentences are unfairly disparate and unjustly lengthy. PACDL seeks sentences to focus on restorative and rehabilitative justice. PACDL, therefore, condemns all mandatory minimum sentencing provisions, the rigorous adherence to the sentencing guidelines, and sentences based on risk assessments.

PACDL further believes that there should always be a balanced analytical approach in sentencing, that does not give undue, disproportionate focus to victim impact statements or considerations not set forth

in the Sentencing Code. The Pennsylvania and United States Constitutions do not afford due process rights to anyone other than the defendant in criminal proceedings. Accordingly, while the law provides for a crime victim to be heard at sentencing, courts should not fashion a sentence based on the specific sentencing request of a victim. Moreover, a victim's wishes for a specific sentence should not undermine fair and just prosecutorial discretion in the administration of justice.

## **20. Sex Offender Registration & Notification Act (SORNA) (2018)**

PACDL strongly supports the complete abolition of the Sex Offender Registration and Notification Act (SORNA). The Association recognizes that this law does not actually meet any of its intended goals to keep the public safe and, in fact, provides a false sense of security to the public. Also, it imposes additional punishment to those who have already paid their debt to society by serving an appropriate sentence. PACDL supports the following:

- a) Enacting legislation memorializing case law that makes SORNA punitive and therefore "expo facto" parts of the Pennsylvania and United States Constitution apply.
- b) Re-evaluating the types of crimes that SORNA applies and eliminate those that do not have any effect on the direct safety of the community.
- c) Creating a tier of SORNA that is not published for less culpable offenses such as indecent assault, indecent exposure, and statutory sexual assault.
- d) Re-evaluating the effectiveness of the Sexually Violent Predator status and the need for Sexual Offenders Assessment Board. Allow local district attorney's offices the ability to decide if an assessment is necessary for a particular case.
- e) Creating a more comprehensive system to classify "out-of-state" offenders that is equitable and complies with the laws of the Commonwealth of Pennsylvania. Offenders should be given credit for the years they served on another state's sex offender registration and not have their registration time re-started just because they moved into Pennsylvania.
- f) Requiring explicit notification of any SORNA registration requirements both at the time of the plea and at sentencing. This notification should be provided on the record and in a written colloquy. Ensure that failure to provide adequate notification is an affirmative defense to any failure to register charges that may be brought against a person.

## **21. Suspicionless Detention (2019)**

PACDL advances zealous defense at all stages of prosecution. PACDL believes investigative detention of individuals absent particularized reasonable suspicion endangers citizens' rights under the Fourth Amendment of the United States Constitution and Article I, Section 8 of the Pennsylvania Constitution. PACDL condemns all such intrusions upon personal liberty.

### *Comments*

Examples of suspicionless intrusions include sobriety checkpoints, roadblocks, suspicionless intrusions or searches of probationers or parolees, and data such as individual GPS and cell phone location information in the absence of probable cause and a warrant.

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<sup>i</sup> *United States v. Salerno*, 481 U.S. 739, 755 (1987).

<sup>ii</sup> ABA standard for pretrial release 10-1.4(c-e).

<sup>iii</sup> NACDL Board Resolution 7/27/12 Concerning Pretrial Release and Limited use of Financial Bond.

<sup>iv</sup> *United States v. Salerno*, 481 U.S. 739, 755 (1987).

<sup>v</sup> The Prison Policy Initiative, <https://www.prisonpolicy.org/reports/pie2018.html>.