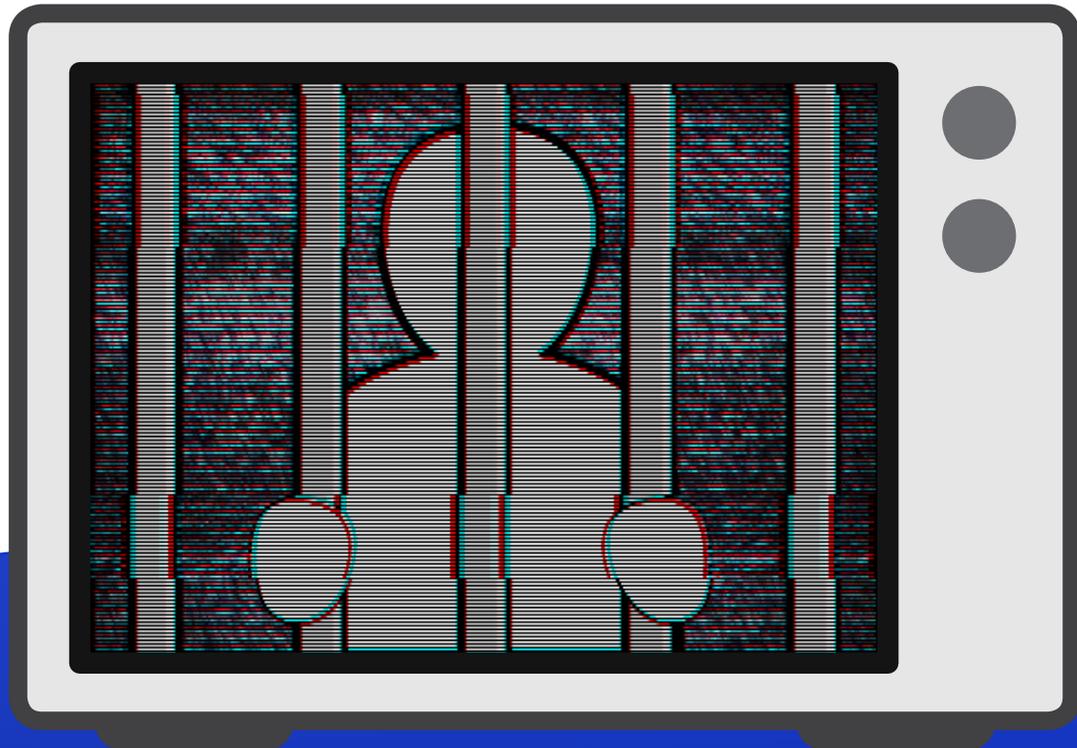


Philadelphia Bail Watch Report

Findings and Recommendations based on 611 Bail Hearings

Presented by the Philadelphia Bail Fund &
Pennsylvanians for Modern Courts

October 15, 2018



About Philadelphia Bail Watch™

Philadelphia Bail Watch is a court watch initiative that invites members of the public to observe preliminary arraignment hearings (commonly known as bail hearings) in Philadelphia criminal court. Philadelphia Bail Watch was launched in April 2018 as a joint initiative of the Philadelphia Bail Fund and Pennsylvanians for Modern Courts, designed to collect and share the public's perceptions of Philadelphia's preliminary arraignment process in order to monitor the current process and advocate for improvements.

www.phillybailfund.org/bailwatch

About the Philadelphia Bail Fund

The Philadelphia Bail Fund is a 501(c)(3) charitable bail organization that was founded in May 2017. The Fund prevents unnecessary pretrial detention by paying bail for Philadelphians who cannot afford their own bail, and advocates for the end of cash bail in Philadelphia. The Fund pays bail at the earliest stage — ideally before individuals are transferred from their holding cells to jail — for people who are indigent and cannot afford bail. The goal of the Philadelphia Bail Fund is to shift Philadelphia's bail system from one that is based on wealth to a fairer and more effective system based on a presumption of release before trial, except in the most exceptional circumstances.

www.phillybailfund.org

About Pennsylvanians for Modern Courts

Pennsylvanians for Modern Courts was founded in 1988 and is the only statewide nonprofit, nonpartisan organization dedicated to ensuring that all Pennsylvanians can come to court with confidence that they will be heard by qualified, fair, and impartial judges. A key tenet of PMC's work is to engage and educate Pennsylvanians to foster a better understanding of local courts, and their place in the judicial system.

www.pmconline.org

Philadelphia Bail Watch is a trademark of Pennsylvanians for Modern Courts.

Acknowledgements

This report was written by Arjun Malik, Cal Barnett-Mayotte, Christina Matthias, Maia Jachimowicz, Malik Neal, Ted Callon, and Zoe Goldberg. Special thanks to Corey Chivers and Ethan Lowens for their work to obtain the docket sheet data used in the report, and to Hank Garrett for his work to design the report. We are also very appreciative of the feedback received on earlier versions of this report from Rachel Foran and other reviewers.

We are deeply appreciative of the work and support of volunteers who attend preliminary arraignment hearings and provide their thoughts and feedback in order to shed light on the current process and provide recommendations for reform. It is the dedication of Philadelphians who are committed to creating a better, more humane criminal justice system that serves as an inspiration for this work.

Finally, the Philadelphia Bail Fund is enormously grateful to our clients whose voices are included in this report. Their participation in this advocacy work is important and necessary for thoughtful reform.

Volunteer with Philadelphia Bail Watch

The next Philadelphia Bail Watch training will take place on October 26, 2018 from 2:00pm - 3:00pm in West Philadelphia. Sign up online at www.phillybailfund.org/bailwatch or text 267-961-3391 indicating your interest. Preliminary arraignment hearings are open to the public and take place multiple times a day, seven days a week, in the Criminal Justice Center, 1301 Filbert St., Philadelphia PA.

Table of Contents

Introduction to the Report	5
What is Philadelphia Bail Watch?	
Why focus on preliminary arraignment?	
What has Philadelphia Bail Watch done?	
Why does this matter?	
What did Philadelphia Bail Watch find?	
What is next?	
A note on language	
Summary of Findings and Recommendations	
Additional Findings and Recommendations	
Background	11
The Preliminary Arraignment Process	
The Participants Involved in Preliminary Arraignment	
How Hearings are Administered	
The Impact of Cash Bail and Pretrial Detention on Individuals Accused of Crimes	
What Philadelphia Bail Watch Observed	17
Minimum, Maximum and Average Bail Assigned for the Five Most Frequent Lead Charges Observed by Philadelphia Bail Watch Volunteers	
Cases Observed by Philadelphia Bail Watch Volunteers by Release Condition	
Average and Median Bail by Race/Ethnicity and Sex of Defendants for Cases Observed by Philadelphia Bail Watch Volunteers	
Race and Sex of Philadelphia Court Magistrates	
Findings and Recommendations	19
The Use of Video Conferencing During Preliminary Arraignments Disadvantages Defendants	
Not Meeting with an Attorney Before Preliminary Arraignment Disadvantages Defendants	
Magistrates' Failure to Conduct Personalized Case Review and Inconsistent Decision-Making Disadvantages Defendants	
Preliminary Arraignment Defendants are Disproportionately People of Color	
Additional Findings and Recommendations	35
Bibliography	36
Appendix: Philadelphia Bail Watch form	38

Introduction to the Report

The Philadelphia Bail Fund and Pennsylvanians for Modern Courts launched Philadelphia Bail Watch in April 2018 in order to shine a light on the city's preliminary arraignment process.

What is Philadelphia Bail Watch?

Philadelphia Bail Watch is a volunteer court watch initiative that invites members of the public to observe preliminary arraignment hearings – the first stage of a criminal case in Philadelphia – in order to learn about the process and provide their perceptions of what they witness. By collecting and sharing the public's perceptions of Philadelphia's preliminary arraignment process, the Philadelphia Bail Fund and Pennsylvanians for Modern Courts seek to monitor the current process and advocate for improvements in Philadelphia's preliminary arraignment process.

Why focus on preliminary arraignment?

Preliminary arraignment is a pivotal step in the criminal justice process. It determines whether and under what conditions a person charged with a crime will be released pretrial. The decisions made during a preliminary arraignment hearing have an outsized impact on case outcomes, people's wellbeing, and overall criminal justice costs. Despite recent changes to the Philadelphia District Attorney's approach to bail recommendations, cash bail continues to be set regularly. If a person cannot afford to post bail, as many cannot, she is incarcerated pretrial despite her presumed innocence.

What has Philadelphia Bail Watch done?

In the nearly six months since Philadelphia Bail Watch was launched, over 76 members of the public have volunteered their time to visit the Criminal Justice Center in downtown Philadelphia to observe bail hearings and provide their comments on what they witnessed. In total, volunteers have observed 611 hearings between April 19, 2018 and August 31, 2018. In 50.1% of these hearings, people were issued cash bail in amounts ranging from \$300 to \$750,000.

Why does this matter?

The observations of court watchers are illuminating for criminal justice stakeholders. Preliminary arraignment hearings in Philadelphia are held in the basement of the criminal courthouse, and while they occur every day, around the clock, they go largely unseen and unnoticed by the public. Court watchers provide a third-party, external view on the current preliminary arraignment process and serve as a critical check on the government's work. As such, court watchers' impressions and recommendations should be given due consideration.

What did Philadelphia Bail Watch find?

Overall, the main finding of Philadelphia Bail Watch volunteers is that Philadelphia's preliminary arraignment system disadvantages individuals charged with crimes and, as a result, threatens one of the most sacred principles in our nation's criminal justice system: a person is innocent until proven guilty.

What follows are the findings and recommendations of Philadelphia Bail Watch based on our work to date. Excerpts from court watchers' observations are highlighted throughout this report.

We also asked several of Philadelphia Bail Fund's clients about their experiences with the preliminary arraignment process. These are individuals for whom the Philadelphia Bail Fund has posted bail, allowing them to return to their families and the community while they fight their cases. Commentary from them about their lived experience going through a preliminary arraignment hearing via video conferencing is included in this report. We believe the experiences and voices of individuals accused of crimes should be lifted up and considered by policymakers.

What is next?

The Philadelphia Bail Fund and Pennsylvanians for Modern Courts present this report to the public, the courts, the offices of the District Attorney (DA) and Public Defender (PD), and other criminal justice stakeholders in an effort to highlight the public's strong objections to the current preliminary arraignment process. The organizations expect that responsible policymakers will read this report and implement the report's recommendations for reform. The Philadelphia Bail Fund and Pennsylvanians for Modern Courts recognize that systemic and comprehensive reform of Philadelphia's preliminary arraignment and bail practices must take into consideration funding, organizational capacity, political pressures and other elements. And yet, many hours of observation have made clear that current practices

make unacceptable sacrifices of a person's rights for the sake of efficiency. The organizations believe that the underlying value of upholding equal justice for all should be the driver of significant policy decisions among criminal justice system leaders. The organizations stand ready to support policymakers as they consider and implement these recommendations.

A note on language

In order to reform a criminal legal system that is not just, there must also be a consideration of the language used to describe the people whose lives are impacted by it. To shift the narrative, the labels placed on individuals by the criminal legal system should be ignored in favor of phrases that preserve dignity and respect an individual as a whole person — one who is not defined by their criminal charges or record. Where possible, the language in this report aims to humanize individuals in a system that often dehumanizes them.

The Philadelphia Bail Fund's ultimate goal is to abolish the use of cash bail in Philadelphia. The findings and recommendations in this report are immediate responses and resolutions to the injustices and inequalities of current bail practices, but do not replace the need to move to a presumption of release before trial, except in the most exceptional circumstances.

Summary of Findings and Recommendations

Finding: The Use of Video Conferencing During Preliminary Arraignments Disadvantages Defendants

RECOMMENDATION

Philadelphia should cease its use of video conferencing for preliminary arraignment hearings and conduct all bail hearings in person.

Finding: Not Meeting with an Attorney Before Preliminary Arraignment Disadvantages Defendants

RECOMMENDATION

Philadelphia should give individuals an opportunity to meet with counsel in private before their bail hearings.

Finding: Magistrates' Failure to Conduct Personalized Case Review and Inconsistent Decision-Making Disadvantages Defendants

RECOMMENDATIONS

- Philadelphia should cease the use of bail guidelines in hearings;
- Philadelphia should issue public guidance on what is required of magistrates to explain and do for each hearing;
- Philadelphia should require magistrates to state the reasons for their bail decisions on the record and find that no less restrictive alternative could reasonably ensure court appearance and public safety;
- Defendants should receive a written explanation of their individual bail decision alongside the information they already receive about their court dates and release conditions;
- Bail hearings should be recorded/transcribed;
- Philadelphia should increase training among court magistrates to address variation in decision-making; and
- Philadelphia should implement regular internal reviews of magisterial decisions in order to ensure consistency of bail decisions across the six magistrates. Analysis of magisterial decisions by race, gender, charges, hearing time and day, and other relevant factors should be conducted and any significant disparities should be immediately reviewed and corrected.

Finding: Preliminary Arraignment Defendants are Disproportionately People of Color

RECOMMENDATIONS

- Philadelphia should conduct research to identify, assess, and reduce racial disparity. Specifically:
 - “1. Determine whether the rate of minorities involved at any stage of the criminal justice system is disproportionate;
 2. Assess the decision points where racial and ethnic disparities occur;
 3. Identify plausible reasons for any disparity identified and the extent to which it is related to legitimate public safety objectives;
 4. Design and implement strategies to reduce disparities; and
 5. Monitor the effectiveness of strategies to reduce disparities¹”
- Philadelphia should capture more detailed race/ethnicity data in docket sheets, including separately capturing Latinx as a data category.
- Philadelphia should “require training on race-sensitive pretrial decision making for all criminal justice officials involved in making or influencing pretrial decisions, including judges, prosecutors, defense counsel, pretrial program directors, and other service providers, as appropriate” at least annually²

1. Judy Greene, Marc Mauer, and Ashley Nellis, “Reducing Racial Disparity in the Criminal Justice System: A Manual for Practitioners and Policymakers,” second edition, produced by The Sentencing Project, (2008): 21-26, <https://www.sentencingproject.org/wp-content/uploads/2016/01/Reducing-Racial-Disparity-in-the-Criminal-Justice-System-A-Manual-for-Practitioners-and-Policymakers.pdf>

2. Green, Mauer, and Nellis, “Reducing Racial Disparity in the Criminal Justice System,” 30.

Additional Findings and Recommendations

Finding: There are no publicly available summary data, published by the courts, on preliminary arraignment outcomes. Providing these data to the public would enhance transparency and allow interested stakeholders to more easily monitor the current process.

RECOMMENDATION

Release summary data on bail decisions to the public on at least a quarterly basis. This data should include summary bail decision data by defendants' race, gender, charges, hearing time and day, and other relevant factors.

Finding: In some instances, the courts rely on emergency magistrates to administer preliminary arraignment hearings when a regular court magistrate is ill or unavailable. Volunteers observed even more discrepancy in the decision-making process among these emergency magistrates.

RECOMMENDATION

The use of emergency magistrates should be highly regulated and required training must be up-to-date in order to ensure compliance with court guidelines.

Volunteers were overwhelmingly struck by what they observed in bail hearings and felt that current practices should be reevaluated by the responsible policymakers.

Responsible and influential Philadelphia preliminary arraignment policymakers, including Philadelphia Municipal Court President Judge Marsha Neifield, Philadelphia District Attorney Larry Krasner and Philadelphia Chief Public Defender Keir Bradford-Grey should regularly observe preliminary arraignment hearings to see firsthand the unfairness inherent in the current system and monitor implementation of any reform initiatives.

Background

The Preliminary Arraignment Process

In Philadelphia, the District Attorney's Office initiated prosecution in over 36,000 cases for people who were arrested in 2017. Through the first 8 months of 2018, the District Attorney's Office initiated prosecution in over 21,000 cases. For each of these cases, the arrested individual must be given a preliminary arraignment hearing (also known as a bail hearing) within 48 hours of arrest.

“Philadelphia is one of the last big cities that fully embraces closed-circuit television systems for preliminary arraignment hearings.”³ This means defendants are not physically present at their preliminary arraignment hearings, but rather appear over a closed-circuit television screen from a police precinct somewhere in Philadelphia.

At the preliminary arraignment hearing the court:

1. Tells the person what crime/s they are being charged with;
2. Informs the person of their rights;
3. Schedules the person's preliminary hearing; and
4. Sets or denies bail.

A preliminary arraignment magistrate, sometimes referred to as a bail commissioner, executes these duties on behalf of the court. The magistrate determines the conditions of a person's release or imprisonment until her case is adjudicated. This determination is supposed to be based on the following two main factors:

1. The likelihood the person will return for all future court dates, and
2. The likelihood the person will commit a serious crime in the community before her case is adjudicated.

If the magistrate finds that there is a significant risk that the person will not appear in court or will commit a serious crime, the magistrate can impose a range of conditions for a person's release. Pennsylvania Rule of Criminal Procedure 524 details the five release types:

3. Ryan Briggs, “Philly's video bail system draws continued criticism,” *City & State Pennsylvania*, November 18, 2016, <https://www.cityandstatepa.com/content/phillys-video-bail-system-draws-continued-criticism>.

1. **Release on Recognizance (ROR):** Release conditioned only upon the defendant's written agreement to appear when required and to comply with the conditions of the bail bond.

ROR was assigned in 300 bail hearings (49%) observed by Philadelphia Bail Watch volunteers.

2. **Release on Non-monetary Conditions:** Release conditioned upon the defendant's agreement to comply with any non-monetary conditions, which the bail authority determines are reasonably necessary to ensure the defendant's appearance and compliance with the conditions of the bail bond. For example, release might be conditioned on the requirement that the defendant report to pretrial services.

Release on Non-monetary Conditions was assigned in 4 bail hearings (1%) observed by Philadelphia Bail Watch volunteers.

3. **Release on Unsecured Bail Bond:** Release conditioned upon the defendant's written agreement to be liable for a fixed sum of money if he or she fails to appear as required or fails to comply with the conditions of the bail bond. No money or other form of security is deposited.

Release on Unsecured Bail Bond was assigned in 43 bail hearings (7%) observed by Philadelphia Bail Watch volunteers.

4. **Release on Nominal Bail:** Release conditioned upon the defendant's depositing a nominal amount of cash which the bail authority determines is sufficient security for the defendant's release, such as \$1.00, and the agreement of a designated person, organization, or bail agency to act as surety for the defendant.

Release on Nominal Bond was assigned in 0 bail hearings (0%) observed by Philadelphia Bail Watch volunteers.

5. **Release on a Monetary Condition:** Release conditioned upon the defendant's compliance with a monetary condition imposed pursuant to Rule 528. The amount of the monetary condition shall not be greater than is necessary to reasonably ensure the defendant's appearance and compliance with the conditions of the bail bond.

Release on Monetary Conditions was assigned in 259 bail hearings (42%) observed by Philadelphia Bail Watch volunteers.

Under certain circumstances a defendant is **denied bail** and held in jail throughout the duration of their case. These circumstances include (1) for capital offenses or for offenses for which the maximum sentence is life imprisonment; or (2) when the magistrate believes that no condition or combination of conditions other than imprisonment will reasonably assure the safety of any person and the community when the proof is evident or presumption great.

Bail was denied in 5 bail hearings (1%) observed by Philadelphia Bail Watch volunteers.

The Participants Involved in Preliminary Arraignment

A preliminary arraignment magistrate - often referred to as the bail commissioner - presides over preliminary arraignments. The magistrate is not a judge; they are appointed by the court to oversee preliminary arraignments and do not have to be trained as an attorney. In Philadelphia, there are currently six court magistrates who oversee the 24/7 preliminary arraignment courtroom.

Following arrest, individuals accused of crimes are transported to one of seven precincts throughout the city. The preliminary arraignment hearings are held in the basement of the Criminal Justice Center, located at 13th and Filbert Streets, with people appearing via video conference technology from the various precincts where they are detained. Individuals awaiting preliminary arraignment are often held in large, open rooms, with many other individuals - police officers and other arrestees - all around them.

In addition to the bail commissioner, a representative from the Defender Association of Philadelphia (Philadelphia's Public Defender office, appointed in a majority of cases) is physically present at the Criminal Justice Center to participate in the hearings on behalf of the defendant. A representative from the District Attorney's Office is likewise present, serving as the government's representative on behalf of the prosecution. A clerk of court is present in the room as well, to track and file information about the hearings.

The public is able to observe the hearings as they occur, from behind a glass wall; sound is emitted to the defendant and the public via microphone technology.

If microphones are turned off or moved away from the speaker's mouth then only the people present inside the glass enclosure within the room can hear; the defendant and public observers are unable to hear conversation that is not broadcast over the microphones.

How Hearings are Administered

- Hearings take place approximately every four hours, seven days a week
- The same magistrate presides over all hearings for a given “shift”
- Each hearing is short; the median length of time per case is approximately 2 minutes as observed by Philadelphia Bail Watch volunteers
- Most people charged with crimes do not speak with an attorney before or during the preliminary arraignment hearing
- If the court believes that an individual cannot afford to hire an attorney based on their income, they will be represented by the Defender Association or a court-appointed attorney. This was the case for 82.7% of hearings observed by Philadelphia Bail Watch volunteers
- The proceeding is informal: It is not recorded or transcribed, there is no court reporter present.
- Each magistrate has her own way of running preliminary hearings. Some ask the representative from the Public Defender’s Office to weigh in first on release recommendations, though most ask the the representative from the District Attorney’s Office first; some provide explicit details about what a “stay away” order entails, others do not; some explain the purpose of the preliminary arraignment hearings and others do not.
- *Frequently there are no lawyers in the room participating in the preliminary arraignment hearing. None of the current magistrates is an attorney, and non-attorneys (e.g. paralegals, interns) often represent both the Public Defender’s Office and the District Attorney’s Office at the hearings.⁴ Thus the hearings are typically run entirely without practicing attorneys. While the absence of attorneys does not imply wrongdoing, it is noted here because it is in stark contrast to all other criminal proceedings by the court.*

4. The Defender Association is typically represented by licensed attorneys at weekend and evening hearings.

The Impact of Cash Bail and Pretrial Detention on Individuals Accused of Crimes

Despite recent changes to the Philadelphia District Attorney's approach to bail recommendations, the District Attorney's Office continues to regularly request cash bail, and cash bail is regularly set, including in many non-felony cases. The District Attorney's bail requests and court magistrates' bail decisions keep many people incarcerated prior to and throughout trial.

People of color are disproportionately subjected to pretrial incarceration. Studies demonstrate that cash bail is imposed more frequently and in higher amounts against Black and Latinx defendants as compared with similarly situated White defendants; Black and Latinx defendants are also more often unable to pay the cash bail amounts set in their cases as compared to White defendants.⁵

Incarceration prior to and throughout trial (commonly referred to as "pretrial detention") has a serious, negative impact on the outcome of an individual's case. Research demonstrates that "pretrial detention significantly increases the probability of conviction, primarily through an increase in guilty pleas."⁷ This effect has been demonstrated with data from Philadelphia, in particular.⁸

Moreover, compared with individuals who are released pretrial, those subject to pretrial detention are far more likely to receive an incarceratory sentence if convicted, and on average receive much lengthier incarceratory sentences.⁹ Pretrial incarceration undermines a person's ability to participate in his or her own defense and has been shown to increase a person's likelihood of pleading guilty.¹⁰

5. Traci Schlesinger, "Racial and ethnic disparity in pretrial criminal processing," *Justice Quarterly* 22, no. 2 (2005), <https://doi.org/10.1080/07418820500088929>; Stephen DeMuth, "Racial and Ethnic Differences in Pretrial Release Decisions and Outcomes: A Comparison of Hispanic, Black, and White Felony Arrestees," *Criminology* 41, no. 3 (August 2003), <https://doi.org/10.1111/j.1745-9125.2003.tb01007.x>; Cynthia Jones, "'Give Us Free': Addressing Racial Disparities in Bail Determinations," *Articles in Law Reviews & Other Academic Journals* 301 (2013): 938-942, https://digitalcommons.wcl.american.edu/facsch_lawrev/301/.

6. *Id.*

7. Will Dobbie, Jacob Goldin, and Crystal S. Yang, "The Effects of Pretrial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges," *American Economic Review* 108, no. 2 (February 2018): 201, <https://doi.org/10.1257/aer.20161503>.

8. Ethan Frenchman, Arpit Gupta, and Christopher Hansman, "The Heavy Costs of High Bail: Evidence from Judge Randomization," *The Journal of Legal Studies* 45, no. 2 (June 2016), <https://doi.org/10.1086/688907>.

9. Alexander Holsinger, Christopher T. Lowenkamp, and Marie VanNostrand, "Investigating the Impact of Pretrial Detention on Sentencing Outcomes," a report for The Laura and John Arnold Foundation (November 2013): 4, https://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF_Report_state-sentencing_FNL.pdf.

10. Megan Stevenson, "Distortion of Justice: How the Inability to Pay Bail Affects Case Outcomes," *Journal of Law, Economics & Organization* Forthcoming (July 15, 2018), <https://ssrn.com/abstract=2777615>.

Beyond the negative legal consequences, pretrial detention also imposes the personal costs of incarceration on individuals who are considered by law to be innocent. This can mean losing one's job, being separated from children and potentially having children removed from the home, having access to necessary medication or medical treatment cut off, and losing one's home, to name just a few examples. Moreover, pretrial detention imposes the emotional trauma of incarceration on people who have not been convicted of any crime. Bureau of Justice Statistics reveal that suicide was the leading cause of death in jails between 2000 and 2013, and that four out of five of those incarcerated individuals who took their own life during that time frame were being held pretrial.¹¹

11. Scott Ginder, Margaret Noonan, and Harley Rohloff, U.S. Dep't of Justice, "Mortality in Local Jails and State Prisons, 2000-2013 – Statistical Tables," Office of Justice Programs: Bureau of Justice Statistics (August 2015): 1-3, <https://www.bjs.gov/content/pub/pdf/mljisp0013st.pdf>.

What Philadelphia Bail Watch Observed

Appearing below are summary statistics from the 611 hearings observed by Philadelphia Bail Watch volunteers between April 19, 2018 and August 31, 2018. These statistics are meant to provide insight into what volunteers observed; they are not a rigorous or controlled statistical study of preliminary arraignments in Philadelphia.

Minimum, Maximum and Median Bail¹² Assigned for the Five Most Frequent Lead Charges¹³ Observed by Philadelphia Bail Watch Volunteers

Charge Number	Charge Description	Hearings Observed	Percentage of Observed Hearings	Min. Bail Assigned	Max Bail Assigned	Median Cash Bail Assigned ¹⁴
35 § 780-113 §§ A30	Manufacture, Delivery, or Possession With Intent to Manufacture or Deliver [Controlled Substances]	85	14%	\$0 (ROR)	\$750,000 (Monetary)	\$6,700
75 § 3802	Driving Under the Influence	60	10%	\$0 (ROR)	\$10,000 (Monetary)	\$3,500
35 § 780-113 §§ A19	Purchase/ Receipt of Controlled Substance	59	10%	\$0 (ROR)	\$0 (Non-monetary)	n/a
35 § 780-113 §§ A16	Intentional Possession of Controlled Substance	57	9%	\$0 (ROR)	\$5,000 (Monetary)	\$2,500
18 § 2702	Aggravated Assault	47	8%	\$0 (ROR)	\$100,000 (Monetary)	\$7,500

Note: In total Philadelphia Bail Watch volunteers observed 611 hearings, which included 82 unique charge numbers. In most cases, people are charged with multiple offenses. This chart sums the five most frequent charges observed, based on the lead charge listed in the "Charges" section of the docket sheet.

12. Bail data do not control for case history.

13. Based on the lead charge listed in a docket's "Charges" section.

14. In the order as they are listed above, the proportion of cases with each leading charge that had cash bail assigned were: 72.9%, 13.3%, 0%, 10.5%, and 97.9%.

Cases Observed by Philadelphia Bail Watch Volunteers by Release Condition

Release Type	Frequency	Percentage of Total
Release on Recognizance	300 Cases	49%
Release on Non-Monetary Conditions	4 Cases	1%
Release on Unsecured Bail Bond	43 Cases	7%
Release on Nominal Bond	0 Cases	0%
Release on Monetary Conditions	259 Cases	42%
Denied Bail	5 Cases	1%
Total	611	100%

Average and Median Bail¹⁵ by Race/Ethnicity¹⁶ and Sex of Defendants for Cases Observed by Philadelphia Bail Watch Volunteers

Race and Sex	Number of Hearings Observed	Percentage of Total Hearings Observed	Average Bail	Median Bail
Black Male	308	54%	\$27,040	\$2,500
Black Female	64	10%	\$12,600	\$0
White, Latino or Other Male	193	32%	\$20,560	\$0
White, Latina or Other Female	46	8%	\$4,140	\$0
Total	611	100%		

Race and Sex of Philadelphia Court Magistrates

Race and Sex	Count	Percentage of Total
Black Male	0	0%
Black Female	1	17%
White Male	4	67%
White Female	1	17%
Total	6	100%

15. Bail data do not control for criminal history or charges.

16. Court docket sheets do not distinguish between White and Latinx defendants. As a result, this table groups all White, Latinx and other defendants, including those for whom race was left unspecified, into a single group.

Findings and Recommendations

Finding: The Use of Video Conferencing During Preliminary Arraignments Disadvantages Defendants

Nearly all Philadelphia Bail Watch volunteers concluded that the system of video conferencing is “dehumanizing” or otherwise has a depersonalizing effect, and likely negatively impacts arraignment outcomes for the defendant.

Below are some of the observations from Bail Watch volunteers:

“I think it’s terrible. It depersonalizes the process exponentially. It also increases the speed and I think is incredibly unfair for the defendant.”

“I think it[’s] completely unfair. These are peoples[’] lives at stake, forced to sit through a video process where half of the time they cannot hear anything that’s going on, being defended by a public defender they have never seen before or had a chance to even ever talk to.”

“It’s so easy to ignore the defendant and you can see them shut down and get quiet because they don’t feel like anyone will listen to them.”

“I hate it, it really dehumanizes the defendant--couldn’t see the whole face. Also the video is sometimes muffled with a lot of background noise and it’s hard to hear.”

“Very dehumanizing and isolating, hard to see defendants, hard to hear them, probably hard for them to communicate with magistrate and public defender/District Attorney rep.”

“If I was a defendant, I would like to be heard if I had something to say. I would like to see and hear everyone who is part of making decisions. I would like to be able to address things I didn’t understand.”

“One defendant raised his hand and said ‘excuse me’ to which no one responded or perhaps even noticed. I wonder what it would have been like if the defendant was actually in the room and couldn’t be ignored.”

Below are some of the observations from Philadelphia Bail Fund clients:

"I was treated like I was guilty...treated horribly. The commissioner didn't care what I had to say. They were discussing my case and I couldn't say anything. I was being accused of things, but I felt like a fly on the wall."

"I heard all the questions they asked me but I couldn't hear when they were talking to each other. It was kind of hard to hear...and I was tired and dehydrated."

"I don't think anything could be more impersonal than sitting there learning your fate from a TV screen. You can't plead your case, you can't state what actually happened, you can't do any of that. They tell you to sit down, shut up, speak when spoken to."

"Could vaguely hear stuff...very staticky. Video screen kept going in and out."

Volunteers observed that people on screen are easily ignored with video conferencing and often displayed little or no understanding of the proceedings taking place.

- Volunteers observed multiple instances in which people on screen asked questions about the arraignment process or asked to speak to magistrates.
- On some occasions, instead of responding to the question, the arraignment magistrate simply switched the channel to the next police district or ignored the request. In other instances, individuals were told to speak with their lawyer at a later date.
- At times, a representative from the Public Defender's office advised the person not to speak in order to protect against self-incrimination and offered to answer the person's questions at a later date during a private meeting.
- In rare instances when a person on screen asked a question and the magistrate or public defender representative answered the question, they did so hastily.

The ability to simply "switch off" or ignore a person through the use of video is just one example of how video technology often serves to undermine the dignity of individuals accused of crimes. When people appear before judicial officers in person, it is much harder to ignore their questions and concerns.

Volunteers observed that people charged with crimes are often unable to witness their hearing.

- Volunteers observed on numerous occasions that magistrates and representatives from the District Attorney's office and Public Defender's office would speak about a person's case before or after they were present on the video conference, ensuring that the person was not present as some of the facts and arguments surrounding their case were discussed.
- Volunteers also observed various occasions where magistrates and representatives from the District Attorney's office and Public Defender's office intentionally turned off their microphone so that they could speak about a person's case in front of the person without being heard by the person or the observers.
- For some hearings, bail determinations were made without the defendant ever present. Rather, the magistrate discussed the facts of the case and heard recommendations from representatives from the District Attorney's office and Public Defender's office and made bail determinations without any person on the screen. Then, the magistrate would turn on the video conferencing technology and simply read the bail decision that had been previously determined to the individual.

The use of video conferencing means that the court has outsized control over what an individual can hear and see at their own hearing. When a person is not present at their own hearing, or if they cannot hear all of the discussion surrounding their hearing, they cannot fully advocate for themselves and correct inaccuracies.

Volunteers observed that video conferencing technology often had poor audiovisual quality.

- Volunteers observed that often times the person's face was partially or completely obscured on the screen. At times the magistrate could not even tell whether the person was present and would ask them to move closer or farther away from the camera. At certain police districts, the camera is positioned at the top of people's heads, making it hard or impossible to see people on screen.
- Volunteers also observed very poor sound quality through video conferencing. This is due, in part, to the conditions in police districts where people are in a large room alongside other defendants and officers who are talking, which makes it hard for the individual, the court magistrate and others to hear.

- Many times, volunteers observed that defendants and magistrates asked for information to be repeated because of an inability to hear one another.

Bail decisions based on incomplete information and errors are more likely when a person is not able to fully see, hear or participate in their preliminary arraignment hearing, and if the court magistrate and representatives from the District Attorney’s office and Public Defender’s office cannot fully see or hear the individual.

Research supports volunteers’ observations that video conferencing disadvantages people charged with crimes

- A 2010 study in Chicago found that bail amounts increase by an average of 51% when video conferencing technology is used in place of having defendants appear in person.¹⁷ As a result, Chicago eliminated its video conferencing system and people appear in person for their bail hearings.
- One case study on the use of closed-circuit television (CCTV) to conduct bail hearings in Baltimore courts concluded that “CCTV leaves accused individuals without constitutional safeguards and makes them vulnerable to an erroneous deprivation of liberty, which uproots the organization of their lives and negatively affects trial outcomes... CCTV bail reviews strip away the rights and liberty interests of accused individuals only to further administrative convenience.”¹⁸

Recommendation:

Philadelphia should cease its use of video conferencing for preliminary arraignment hearings and conduct all bail hearings with the defendant in person.

17. Locke E. Bowman, Shari Seidman Diamond, Matthew M. Patton, and Manyee Wong, “Efficiency and Cost: The Impact of Videoconferenced Hearings on Bail Decisions,” *Journal of Criminal Law & Criminology* 100, no. 3 (Summer 2010): 892, <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=7365&context=jclc>.

18. Edie Fortuna Cimino, Zina Makar, and Natalie Novak, “Charm City Televised & Dehumanized: How CCTV Bail Reviews Violate Due Process,” *University of Baltimore Law Forum* 45, no. 1 (Fall 2014): 104, <http://scholarworks.law.ubalt.edu/lf/vol45/iss1/4>.

Finding: Not Meeting with an Attorney Before Preliminary Arraignment Disadvantages Defendants

Volunteers consistently found that the total lack of communication between attorney and client resulted in extremely limited, impersonal advocacy during hearings, and often left defendants confused about the process and with questions unanswered.

Below are some of the observations from Bail Watch volunteers:

"It felt like defendants were just alone via video with the magistrate and DA both of which seemed not on their side."

"The defendant sometimes told the magistrate sensitive information about their case. They should either have an attorney with them or be told clearly beforehand by the magistrate that giving information about their case at this stage may harm their defense."

"The public defender made very brief (i.e. one sentence) statements in a few of the hearings."

"Most often, [the public defender] was telling the defendant not to speak about the case."

"The most frustrating part was how the defendants were treated when they asked questions. They were spoken down to, questions were not answered clearly, and they weren't allowed to follow up."

"One man could not understand why it was in his interest to receive credit for bail (he had to be detained anyway for breaking his parole). After one quick attempt to explain, the magistrate gave up and gave the man bail anyway."

"I found explanations by the magistrate and DA and PD very confusing. I think the defendants did too."

"I don't think a lot of defendants understood what was going on. They couldn't even hear side conversations."

"I often got lost in the language. Even defendants that ask for clarification just get the same words spewed back at them."

"The magistrate sometimes ignored the defendant's questions because he felt he was being interrupted and then didn't address them after. When he did try to answer questions, his responses were using legal jargon not very accessible to the defendant."

Below are some of the observations from Philadelphia Bail Fund clients:

“[The public defender] didn’t really speak much. It’s hard for them to do you justice when they don’t know you or haven’t spoken to you.”

“I wouldn’t know if [the public defender] was trying to help; I couldn’t hear what they was talking about or understand.”

“There’s a lack of information and resources. The public defenders don’t have the same resources that the DA and police have. So how can the judicial system even seem fair?”

“You’re tried like you’re criminal before you’re found guilty or innocent.”

People charged with crimes do not have access to counsel before their preliminary arraignment hearing, except in limited circumstances where a person has financial means and can act quickly to hire private counsel. There is no mechanism in place for public defenders, present at the Criminal Justice Center, to have a conversation with their clients who are held in precincts around the city, prior to preliminary arraignment hearings being conducted.

Volunteers observed that advocacy by the public defender representative was generic and impersonal, when offered at all.

- Unable to meet with and learn about the lives of their clients before hearings, public defenders have little information with which to put on a strong defense and, as a consequence, rarely say anything on behalf of their clients.
- Volunteers observed multiple magistrates explicitly state that they are setting unaffordable bail to hold someone. Yet, according to the Comment to Pennsylvania Rule of Criminal Procedure 524, “No condition of release, whether nonmonetary or monetary, should ever be imposed for the sole purpose of ensuring that a defendant remains incarcerated until trial.”
- Effective representation at bail hearings is proven to help people receive more favorable and fairer release conditions in other jurisdictions,¹⁹ but individuals here in Philadelphia are unable to benefit from personalized advocacy.

19. Shawn Bushway, Douglas L. Colbert, and Raymond Paternoster, “Do Attorneys Really Matter? The Empirical and Legal Case for the Right of Counsel at Bail,” *Cardozo Law Review* 23, no. 5 (2002): 1720, http://digitalcommons.law.umaryland.edu/fac_pubs/291/.

Volunteers observed that without the chance to speak with a lawyer prior to the hearing, people were often confused during their hearings or had questions that went unanswered.

- Because defense attorneys do not have an opportunity to explain to clients how bail hearings work, clients often appear as if they do not understand the proceedings that will determine their freedom.
- Volunteers observed that many people are clearly confused or can only partially hear what is said at their hearings.
- Without an opportunity to speak with counsel before or immediately after the hearing, people's questions go unanswered until the first time they meet with their lawyer following preliminary arraignment (often days or weeks later).

People often begin speaking about the facts of their case mid-hearing, only to be silenced by the public defender who speaks over them to urge them to refrain from discussing these details. Without access to legal counsel prior to the hearing, individuals have no way of knowing that speaking up in this way could be detrimental to their case.

- Individuals also have virtually no way of safely conveying facts that could be helpful to their case to a representative from the Public Defender's Office in advance of, or during, the preliminary arraignment hearing.
- In a few instances Philadelphia Bail Watch volunteers observed a representative from the Public Defender's Office raise a question about the validity of an arrest or charge and the magistrate refused to consider it.
- In three instances, Philadelphia Bail Watch volunteers observed a representative from the Public Defender's Office request the opportunity to speak privately with a client via CCTV before proceeding. In those instances, the magistrate granted the request and had everyone clear the courtroom so that the client could with a representative from the Public Defender's Office without the court magistrate or representative from the District Attorney's Office present. Nevertheless, these conversations should not be considered private given that the individual is often sitting alongside other arrestees and is in the presence of police officers.

The practice of denying individuals accused of crimes the opportunity to meet with their attorneys prior to preliminary arraignment not only undermines their position at the hearing and denies them the opportunity to ask sensitive questions about their case, it also directly violates the Pennsylvania Administrative Code.

- The Administrative Code is the legal source that permits Preliminary Arraignments to be conducted via video conferencing: “In the discretion of the issuing authority, the preliminary arraignment of the defendant may be conducted by using two-way simultaneous audio-visual communication.”²⁰
- That very section goes on to require that when counsel is present, the opportunity for confidential communication between defense counsel and client is mandatory: **“When counsel for the defendant is present, the defendant must be permitted to communicate fully and confidentially with defense counsel immediately prior to and during the preliminary arraignment.”**²¹

The present circumstances, which make full and confidential communication between public defenders and their clients prior to and during preliminary arraignment nearly impossible, violate the important right of people charged with crimes - as established by the Pennsylvania Administrative Code - to be able to engage in this type of communication.

Recommendation:

Philadelphia should give people an opportunity to meet with counsel in private before their bail hearings

20. 234 Pa. Code, Rule 540(A).

21. *Id.*

Finding: Magistrates' Failure to Conduct Personalized Case Review and Inconsistent Decision-Making Disadvantages Defendants

Volunteers consistently observed that arraignment magistrates move extremely quickly through hearings, rarely appearing to engage in personalized review of the person or case at hand. Further, an observed variation in bail decisions both among different magistrates and by the same magistrate at different times appears arbitrary because magistrates regularly fail to offer any reasons to explain the variation between decisions.

Below are some of the observations from Bail Watch volunteers:

"High cash bails are being set with no concern for what people can afford or very little about them."

"The magistrate never asked about the defendant's ability to pay or if there were any resources for support in the case the defendant could not."

"It was so quick! I was surprised at how little the magistrate read the facts of the case and listened to the defendant before making a decision."

"[The magistrate] appeared to be rushed, perfunctory, callous, and seemingly arbitrary in his approach."

"The magistrate seemed to make the decisions very quickly and rarely asked any questions to either the DA or PD."

"[T]he magistrate just gets to choose a number for bail."

"It was very fast and not enough time to truly consider individuals as individuals."

"The speediness of the hearings is like traffic court only these hearings determine whether or not you are held in pretrial detention."

"It was like 2-3 minutes each. It seemed ridiculously short as this is an event determining someone's freedom."

Below are some of the observations from Philadelphia Bail Fund clients:

"[The magistrate is] just fast and unfair and not taking into consideration the welfare of the defendant sitting in the jail."

"I told her I was unemployed. They were negotiating about my bail. The commissioner said, 'I'm going to make it \$100,000. He's not working, so he can't pay it anyway.' That's word for word - I won't forget that."

"Very short. They don't even have the time to think about the case... They don't care, and the time it takes them to make a decision shows that. Courts only want money."

"[Bail] was more than what I expected or felt was fair; even the police officer who locked me up told me I wouldn't have to pay as much as [the magistrate] told me."

"It shouldn't be whether or not you can give them money to let you back out, but whether or not they have the evidence to have you arrested and incarcerated. That should be taken into account in the preliminary arraignment. You should have the evidence."

"People sitting there making judgments about people's lives, not caring about the impact. They're sitting there pretending like they don't just care about the money."

Volunteers observed that arraignment magistrates rarely appear to take into consideration people's abilities to pay when setting bail.

- Unaffordable bail amounts are often set even when the individual accused of a crime is indigent and has been assigned a public defender.
- In one particularly illustrative example, the magistrate and Public Defender representative debated the level of cash bail for an individual who was homeless and accused of simple assault. Ultimately the magistrate issued \$1,000 bail (\$100 + \$10 fee required for release), which he considered as "nominal" despite knowledge that the person had no income and was homeless. Without the Philadelphia Bail Fund's assistance, the individual would have been incarcerated at least until his early bail review and perhaps until trial.

In the early 1980s, Philadelphia introduced bail guidelines that recommend bail amounts based on the severity of a person’s criminal charges and prior criminal history.

Using bail guidelines and schedules, based on the severity of a person’s charge and their criminal history, presumptively sets bail for hundreds of people who are not able to afford it.

- Volunteers observed magistrates reference bail guidelines, at times, to justify setting bails that ignore a Public Defender representative’s advocacy.
- At times, volunteers observed the magistrate debating with the Public Defender and District Attorney representatives about whether or not the “guidelines” had been updated or were accurate for specific charges, calling into question the very legitimacy of these guidelines.

Volunteers observed that magistrates rarely take the time to explicitly consider all of the various factors that the law requires them to consider before setting bail in a particular case. The very short length of hearings calls into doubt the extent to which magistrates meaningfully consider these factors at all.

- These factors include the person’s family relationships, the person’s ties to the community, the person’s mental health, and the person’s financial ability to post bail.²²
- Additionally, magistrates often refuse to consider any case-specific information that may bear on the likelihood of conviction, clearly ignoring one of the statutory factors that the law requires them to consider when setting bail. Pennsylvania Rule of Criminal Procedure 523(A) requires magistrates to consider “the nature of the offense charged and any mitigating or aggravating factors that may bear upon the likelihood of conviction and possible penalty.”²³

22. 234 Pa. Code, Rule 523(A).

23. *Id.*

Research demonstrates that a person's release conditions vary significantly based on which Philadelphia magistrate they are assigned.²⁴ In addition, research suggests that irrelevant and inappropriate factors, such as the time of day and where among a magistrate's caseload a person falls, can have an impact on bail decisions.²⁵

- Volunteers observed two people arraigned by the same magistrate on the same day receive different bail outcomes despite being charged with the same offenses: 18 § 6106 Firearms W/O License and 18 § 6108 Carrying Firearms in Public. While one person – an African American male with no prior arrest history – was assigned \$20,000.00 cash bail, the other person – a white female with a prior arrest and conviction history – was assigned \$75,000.00 sign on bond (also known as unsecured bail bond), meaning she was released on her signature without being required to make any bail payment to secure her release.
- On one day, volunteers observed a pregnant African American female assigned \$25,000.00 cash bail for being charged with Possession Instrument of Crime W/Int (18 § 907), Simple Assault (18 § 2701), and Reckless Endangering Another Person (18 § 2705). On another day, a young African American male facing the same charges and more (18 § 2702 Aggravated Assault, 18 § 903 Conspiracy, and an additional Possession Instrument of Crime W/Int charge) was assigned \$7,500.00 cash bail. Neither person had a prior arrest history.
- The examples above are based on the observations of volunteers and a review of people's dockets and court histories. It is possible other factors (such as the person's family relationships, the person's ties to the community, the person's mental health, and the person's financial ability to post bail) could account for the stark differences in release conditions; however, as mentioned previously, magistrates rarely take the time to explicitly consider these factors during bail hearings.

24. Dobbie, Goldin, and Yang, "The Effects of Pretrial Detention," 217; Aaron Siegel, "Inconsistent Justice: The Effect of Defendant Income and Extraneous Factors on Bail Amount," presented to the Department of Economics at Harvard College in partial fulfillment of the requirements for a Bachelor of Arts degree with Honors (March 2017): 41-42, <https://university.pretrial.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=8ca9fd5d-7cbb-1a51-6ba9-bdf166463cb4>.

25. Siegel, "Inconsistent Justice," 46-49.

Arraignment magistrates do not articulate in writing any reasons or factual findings that form the basis of their bail decision. The basis for a particular decision is also rarely communicated verbally to the defendant, the Public Defender or District Attorney representatives, and any observers.

Recommendations:

- *Philadelphia should cease the use of bail guidelines in hearings;*
- *Philadelphia should issue public guidance on what is required of magistrates to explain and do for each hearing;*
- *Philadelphia should require magistrates to state the reasons for their bail decisions on the record and find that no less restrictive alternative could reasonably ensure court appearance and public safety;*
- *Defendants should receive a written explanation of their bail decision alongside the information they already receive about their court dates and release conditions;*
- *Bail hearings should be recorded/transcribed;*
- *Philadelphia should increase training among court magistrates to address variation in decision making; and*
- *Philadelphia should conduct regular internal reviews of magisterial decisions in order to ensure consistency of bail decisions across the six magistrates. Analysis of magisterial decisions by race, gender, charges, hearing time and day, and other relevant factors should be conducted and any significant disparities should be immediately reviewed and corrected.*

Finding: Preliminary Arraignment Defendants are Disproportionately People of Color

Many volunteers expressed concern about the racial and gender dynamics in preliminary arraignment hearings. Volunteers observed that a disproportionate number of defendants are people of color as compared with the general population of Philadelphia. By contrast, volunteers noted that the court magistrate and District Attorney representatives were disproportionately White men. Through their observations, volunteers questioned whether this imbalance disadvantages non-White individuals.

Below are some of the observations from Bail Watch volunteers:

"The PD was the only woman and person of color of the three--I wondered about this impact. I also felt she wasn't respected/listened to."

"All white males - DA, PD, magistrate and assistance."

"I saw a lot of black faces [on the CCTV] and I imagine this is in part due to the over-policing of black communities."

"I felt like a [it was] a representation of systemic inequities and arbitrariness in the criminal justice system, namely that seemingly unqualified (non-attorneys) white men were setting bail (terms of freedom) for mostly black men+women with mostly low-level charges. It didn't seem like the magistrate had a consistent set of guidelines or consideration he employed in setting bail, and in fact there was a lot of room for bias - including racial + gender - to inform the conditions of defendants' freedom. Specifically there was a racist undertone to the magistrate's notion of what/who constituted a 'threat to the community.'"

"There are certainly a lot of power dynamics, race dynamics and gender dynamics at play here."

"In between hearings the magistrate, in an attempt to justify her decisions, stated, 'these people can afford to pay for their nails and hair; they certainly can afford to pay bail.' The racial overtones in her comments were shocking. I was outraged and so were the other watchers in the room."

The racial makeup of Philadelphia as of 2017 was: 44% Black; 35% White (not Hispanic or Latinx); 15% Hispanic or Latinx (race can be White, Black, multiple); and 8% Asian.²⁶ Meanwhile, of the 611 hearings that volunteers observed, 60% of defendants were Black and 40% were White, Latinx and other. Court docket sheets do not include Latinx/Hispanic as a category and it is not clear how and whether other races are captured. Therefore, further disaggregation is not possible in this report. Volunteers also observed that four of the six court magistrates (67%) were White men and all District Attorney representatives were perceived to be White men with the exception of one White woman.

While the race and gender of decision-makers are not indicative of their decision-making process, recent research suggests that Philadelphia magistrates make racially biased prediction errors against Black defendants.²⁷ And, as noted on page 15 of this report, studies show that White defendants receive more favorable bail determinations than similarly situated Black defendants. Black and Latinx defendants are also more often unable to pay the cash bail amounts set in their cases as compared to White defendants.²⁸

Structural racism has and continues to plague the United States, including Philadelphia, and the recommendations that follow are meant to be additive to the much deeper, transformational changes that are required in order to achieve racial equity in public policy and beyond. In other words, the following recommendations are included because the Philadelphia Bail Fund and Pennsylvanians for Modern Courts believe they address immediate, glaring injustices in the criminal legal system in Philadelphia. They alone are far from sufficient for achieving racial equity in the criminal legal system.

The majority of the recommendations that follow are taken from The Sentencing Project's "Reducing Racial Disparity in the Criminal Justice System: A Manual for Practitioners and Policymakers," second edition, 2008. All recommendations included in The Sentencing Project's report are worth due consideration, but for the purposes of the Philadelphia Bail Watch report, two global recommendations from this report are included.

26. Data taken from July 1, 2017 Census Bureau population estimates data. The Census Bureau data includes data on additional racial and ethnic groups not detailed.

27. David Arnold, Will Dobbie, and Crystal S. Yang, "Racial Bias in Bail Decisions," *The Quarterly Journal of Economics*, (May 2018), <https://doi.org/10.1093/qje/qjy012>.

28. Schlesinger, "Racial and ethnic disparity in pretrial criminal processing"; DeMuth, "Racial and Ethnic Differences in Pretrial Release Decisions and Outcomes"; Jones, "'Give Us Free,'" 938-942.

Recommendations:

- *Philadelphia should conduct research to identify, assess, and reduce racial disparity. Specifically:*
 - “1. *Determine whether the rate of minorities involved at any stage of the criminal justice system is disproportionate;*
 2. *Assess the decision points where racial and ethnic disparities occur;*
 3. *Identify plausible reasons for any disparity identified and the extent to which it is related to legitimate public safety objectives;*
 4. *Design and implement strategies to reduce disparities; and*
 5. *Monitor the effectiveness of strategies to reduce disparities.”²⁹*
- *Philadelphia should capture more detailed race/ethnicity data in docket sheets, including separately capturing Latinx as a data category.*
- *Philadelphia should “require training on race-sensitive pretrial decision making for all criminal justice officials involved in making or influencing pretrial decisions, including judges, prosecutors, defense counsel, pretrial program directors, and other service providers, as appropriate” at least annually.³⁰*

29. Green, Mauer, and Nellis, “Reducing Racial Disparity in the Criminal Justice System,” 21-26.

30. *Id.*, 30.

Additional Findings and Recommendations

Finding: There are no publicly available summary data, published by the courts, on preliminary arraignment outcomes or types of release. Providing these data to the public would enhance transparency and allow interested stakeholders to more easily monitor the current process.

Recommendation:

Release summary data on bail decisions to the public on at least a quarterly basis. This data should include summary bail decision data by defendants' race, gender, charges, hearing time and day, and other relevant factors.

Finding: In some instances, the courts rely on emergency magistrates to administer preliminary arraignment hearings when a regular court magistrate is ill or unavailable. Volunteers observed even more discrepancy in the decision-making process among these emergency magistrates.

Recommendation:

The use of emergency magistrates should be highly regulated and required training must be up-to-date in order to ensure compliance with court guidelines.

Volunteers were overwhelmingly struck by what they observed in bail hearings and felt that current practices should be reevaluated by the responsible policymakers.

Responsible and influential Philadelphia preliminary arraignment policymakers, including Philadelphia Municipal Court President Judge Marsha Neifield, Philadelphia District Attorney Larry Krasner and Philadelphia Chief Public Defender Keir Bradford-Grey should regularly observe preliminary arraignment hearings to see firsthand the unfairness inherent in the current system and monitor implementation of any reform initiatives.

Bibliography

Arnold, David, Will Dobbie, and Crystal S. Yang, "Racial Bias in Bail Decisions," *The Quarterly Journal of Economics*, (May 2018), <https://doi.org/10.1093/qje/qjy012>.

Banaji, Mahzarin R., Andrew S. Baron, and Yarrow Dunham, "The Development of Implicit Intergroup Cognition," *Trends in Cognitive Sciences* 12, no. 7 (June 2008): 248-253, <https://doi.org/10.1016/j.tics.2008.04.006>.

Bowman, Locke E., Shari Seidman Diamond, Matthew M. Patton, and Manyee Wong, "Efficiency and Cost: The Impact of Videoconferenced Hearings on Bail Decisions," *Journal of Criminal Law & Criminology* 100, no. 3 (Summer 2010): 869-902, <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=7365&context=jclc>.

Ryan Briggs, "Philly's video bail system draws continued criticism," *City & State Pennsylvania*, November 18, 2016, <https://www.cityandstatepa.com/content/phillys-video-bail-system-draws-continued-criticism>.

Bushway, Shawn, Douglas L. Colbert, and Raymond Paternoster, "Do Attorneys Really Matter? The Empirical and Legal Case for the Right of Counsel at Bail," *Cardozo Law Review* 23, no. 5 (2002): 1719-1793, http://digitalcommons.law.umaryland.edu/fac_pubs/291/.

Carlson, Lindsey, "Bail Schedules: A Violation of Judicial Discretion?" *ABA Criminal Justice Magazine*, Vol 26, no. 1, (Spring 2011): 12-17, https://www.americanbar.org/content/dam/aba/publications/criminal_justice_magazine/cjsp11_bail.authcheckdam.pdf.

Cimino, Edie Fortuna, Zina Makar, and & Natalie Novak, "Charm City Televised & Dehumanized: How CCTV Bail Reviews Violate Due Process," *University of Baltimore Law Forum* 45, no. 1 (Fall 2014): 57-104, <http://scholarworks.law.ubalt.edu/lf/vol45/iss1/4>.

DeMuth, Stephen, "Racial and Ethnic Differences in Pretrial Release Decisions and Outcomes: A Comparison of Hispanic, Black, and White Felony Arrestees," *Criminology* 41, no. 3 (August 2003): 873-908, <https://doi.org/10.1111/j.1745-9125.2003.tb01007.x>.

Dobbie, Will, Jacob Goldin, and Crystal S. Yang, "The Effects of Pretrial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges," *American Economic Review* 108, no. 2 (February 2018): 201-240, <https://doi.org/10.1257/aer.20161503>.

Frenchman, Ethan, Arpit Gupta, and Christopher Hansman, "The Heavy Costs of High Bail: Evidence from Judge Randomization," *The Journal of Legal Studies* 45, no. 2 (June 2016): 471-505, <https://doi.org/10.1086/688907>.

Ginder, Scott, Margaret Noonan, and Harley Rohloff, U.S. Dep't of Justice, "Mortality in Local Jails and State Prisons, 2000-2013 – Statistical Tables," Office of Justice Programs: Bureau of Justice Statistics (August 2015), <https://www.bjs.gov/content/pub/pdf/mljsp0013st.pdf>.

Greene, Judy, Marc Mauer, and Ashley Nellis, "Reducing Racial Disparity in the Criminal Justice System: A Manual for Practitioners and Policymakers," second edition, produced by The Sentencing Project, (2008), <https://www.sentencingproject.org/wp-content/uploads/2016/01/Reducing-Racial-Disparity-in-the-Criminal-Justice-System-A-Manual-for-Practitioners-and-Policymakers.pdf>.

Holsinger, Alexander, Christopher T. Lowenkamp, and Marie VanNostrand, "Investigating the Impact of Pretrial Detention on Sentencing Outcomes," November, 2013, Report for The Laura and John Arnold Foundation, (2013), https://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF_Report_state-sentencing_FNL.pdf.

Jones, Cynthia, "'Give Us Free': Addressing Racial Disparities in Bail Determinations," *Articles in Law Reviews & Other Academic Journals* 301 (2013): 919-961, https://digitalcommons.wcl.american.edu/facsch_lawrev/301/.

Schlesinger, Traci, "Racial and ethnic disparity in pretrial criminal processing," *Justice Quarterly* 22, no. 2 (2005): 170-192, <https://doi.org/10.1080/07418820500088929>.

Siegel, Aaron, "Inconsistent Justice: The Effect of Defendant Income and Extraneous Factors on Bail Amount," presented to Harvard College Department of Economics in partial fulfillment of the requirements for a Bachelor of Arts degree with Honors (March, 2017), <https://university.pretrial.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=8ca9fd5d-7cbb-1a51-6ba9-bdf166463cb4>.

Stevenson, Megan, "Distortion of Justice: How the Inability to Pay Bail Affects Case Outcomes," *Journal of Law, Economics & Organization* Forthcoming (July 15, 2018), <https://ssrn.com/abstract=2777615>.

Codes:

234 Pa. Code, Rule 540(A).

234 Pa. Code, Rule 523(A).

Phila M.C.R. Crim. P., A.C.M., Sec., 8.01(a)



Contact Information

Name: _____

Email (optional): _____

Hearing Information

Date: _____

Magistrate name (if available): _____

Start time: _____

End time: _____

of Hearings: _____

Optional Demographics

Your race: _____

Your gender: _____

Your age: _____

In-Court Tracking

If you feel compelled and are able to, please record outcomes of the bail hearings you watch and a general description of the charges using the table on the next page. Use a single table row for each hearing you observe, as space permits. **This is not meant for data collection, so do not worry about capturing everything; this is intended to provide a structured space to highlight any bail hearings with outcomes that you find interesting or surprising.**

For your reference, here are the types of bail the magistrate can set: a

1. **Release On Recognizance (ROR):** the defendant just has to sign a document promising to return for his court date.
2. **Release on Nonmonetary Conditions:** the magistrate can release the defendant so long as he checks in with Pretrial Services on a regular basis or enters a rehab or therapy program.
3. **Release on Unsecured Bail Bond or “Sign-on Bond” (SOB):** the magistrate lets the defendant leave jail without putting up any money. If the defendant does not appear for his court date, however, the court will come after him to collect the bail amount.
4. **Release on Nominal Bail:** the defendant is released on cash bail, but the bail is set at just a few dollars, and some other designated person, organization, or bail agency is made responsible for making sure the defendant appears for his court date.
5. **Release on a Monetary Condition:** the magistrate sets a level of cash bail that is “reasonable” and takes into consideration the defendant’s ability to pay.

Post-Observation Reflection

Your reflections can serve as a powerful advocacy tool. Quotes from this reflection may be used anonymously for promotional purposes on our website or social media. If you have any concerns with your comments being shared please indicate so here.

Please complete this form while the observation is still fresh in your mind, or submit via our Google form.

How often did the public defender say something on behalf of the defendant? 1 is “never” and 5 is “always.” (Please include reflections in addition to rating)

1	2	3	4	5
Never				Always
Comments:				

In general, were defendants’ questions/concerns addressed, if they had any? 1 is “never” and 5 is “always.” (Please include reflections in addition to rating)

1	2	3	4	5	N/A
Never				Always	
Comments:					

Did the magistrate seem to consider defendants’ abilities to pay in setting bail? 1 is “never” and 5 is “always.” (Please include reflections in addition to rating)

1	2	3	4	5
Never				Always
Comments:				

In your opinion, is this process fair to defendants? 1 is “unfair” and 5 is “fair.” (Please include reflections in addition to rating)

1	2	3	4	5
Unfair				Fair
Comments:				

What do you think about the amount of time the magistrate took to consider each case?

What do you think about the use of video conference for bail hearings?

Did you understand what was happening/do you think defendants understood what was happening?

What follow-up questions do you have?

This is space for general thoughts/reflections. What stood out about your experience? What surprised you? How are you feeling about it? Did any individual hearing stand out?

How to submit this form:

1. Fill it out electronically via <https://tinyurl.com/bailwatch>
2. If a Philadelphia Bail Watch coordinator is present, submit directly to them.
3. Snap a photo and email it to info@phillybailfund.org or text to (267) 961-3391.
4. Mail to us at Philadelphia Bail Fund, Inc, P.O. Box 22316, Philadelphia, PA 19110
5. If you are part of a group, submit to your group leader.

To learn more about the Philadelphia Bail Fund, visit www.phillybailfund.org

To learn more about Pennsylvanians for Modern Courts, visit www.pmconline.org