

ACLU
Pennsylvania

ACLU OF PENNSYLVANIA RESEARCH REPORT

Broken Rules

How Pennsylvania Courts Use Cash Bail
to Incarcerate People Before Trial

DECEMBER 2021

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INTRODUCTION

When a person is incarcerated before their trial, they lose more than just their liberty. Pretrial detention also triggers a cascade of harmful consequences. After just a few days in jail, a person can lose their job, access to medical care, custody of their children, and even their homes.¹ These consequences reverberate for years. Individual lives, families and communities are devastated.

Pretrial incarceration also undermines safety, increasing the likelihood of future arrest, presumably because of the traumatizing and destabilizing effects of incarceration.² Reforms that promote public health and safety by allowing

individuals to remain in their communities while awaiting trial have generally not been associated with increased crime.³

Cash bail is a primary driver of pretrial incarceration. When assigned cash bail, an accused person must pay a sum of money to obtain their release. Cash bail keeps poor people incarcerated, while those with means can purchase their freedom. Cash bail also perpetuates systemic racism as judges more often assign unaffordable cash bail to Black people facing charges than white people. Black and Latinx people accused of crimes face far greater risk of pretrial incarceration.⁴

In partnership with the Penn Data Science Group at the University of Pennsylvania, the American Civil Liberties Union of Pennsylvania analyzed a snapshot of the use of cash bail across the commonwealth. To do this, we purchased a statewide dataset of all magisterial district court bail outcomes from 2016-2017 from the Administrative Office of Pennsylvania Courts.

¹ Paul Heaton, Sandra Mayson, & Megan Stevenson, *The Downstream Consequences of Misdemeanor Pretrial Detention*, 69 STAN. L. REV. 711, 713 (2017) (internal citations omitted); JESSICA EAGLIN & DANYELLE SOLOMON, BRENNAN CENTER FOR JUSTICE, *REDUCING RACIAL AND ETHNIC DISPARITIES IN JAILS: RECOMMENDATIONS FOR LOCAL PRACTICE* 19 (2015) (internal citations omitted).

² See e.g. Arpit Gupta, Christopher Hansman & Ethan Frenchman, *The Heavy Costs of High Bail: Evidence from Judge Randomization*, 45 J. OF LEGAL STUD. 471, 494-495 (2016) (finding, in a large study of cash bail in Philadelphia and Pittsburgh, that assigning cash bail to a defendant increased the likelihood of future criminal charges by 6-9%); Paul Heaton, Sandra Mayson, & Megan Stevenson, *The Downstream Consequences of Misdemeanor Pretrial Detention*, 69 STAN. L. REV. 711, 713 (2017) (showing that pretrial detention was associated with an increase in both felony and misdemeanor charges in the future); CHRISTOPHER T. LOWENKAMP, MARIE VANNOSTRAND & ALEXANDER HOLSINGER, LAURA AND JOHN ARNOLD FOUNDATION, *THE HIDDEN COSTS OF PRETRIAL DETENTION* 3, 5 (2013) (finding that pretrial incarceration was associated with an increase in the likelihood of being arrested for a new offense in the future).

³ Tiana Herring, *Releasing People Pretrial Doesn't Harm Public Safety*, POLITICO (Nov. 17, 2020).

⁴ Traci Schlesinger, *Racial and Ethnic Disparity in Pretrial Criminal Processing*, 22 JUSTICE QUARTERLY 170 (2005) (a large study of urban counties showed the odds of being detained pretrial were twice as high for Latinx than white and 87 percent higher for blacks than whites); Stephen Demuth, *Racial and Ethnic Differences in Pretrial Release Decisions and Outcomes: A Comparison of Hispanic, Black, and White Felony Arrestees*, 41 Criminology 873 (2003). Ian Ayres & Joel Waldfogel, *A Market Test for Race Discrimination in Bail Setting*, 46 STAN. L. REV. 987 (1994).

This report examines the use of bail in all 67 counties across the commonwealth. The data shows that:

Finding #1 Magisterial district judges routinely set bail in amounts too high for people to afford. More than half of people assigned cash bail did not post it and remained incarcerated.

Finding #2 Cash bail was the most common type of bail set across Pennsylvania, and set nearly twice as often as release on recognizance (ROR), the least restrictive type of bail.

Finding #3 Some counties rarely assign release on recognizance.

Finding #4 MDJs impose cash bail more frequently and in higher amounts for Black people.

If the system were functioning as our constitution envisions, every person assigned money bail should be able to post it. Yet as our analysis reveals, cash bail puts people in cages—rather than freeing them before trial.

BAIL IN PENNSYLVANIA

Bail in Principle: The Legal Framework

The Pennsylvania Constitution guarantees a broad right to pretrial liberty, which the government may not restrict except in exceedingly rare and limited circumstances.⁵ This fundamental constitutional principle protects the presumption of innocence.⁶ Under Pennsylvania law, bail should only be used to ensure future court appearance—never solely to keep someone incarcerated until trial.⁷ The Pennsylvania Constitution states that the only time the government may jail someone

⁵ Article I, Section 14 of the Pennsylvania Constitution mandates that:

All prisoners shall be bailable by sufficient sureties, unless for capital offenses or for offenses for which the maximum sentence is life imprisonment or unless 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. . . .

PA. CONST. art. 1, § 14 (amended 1998). This means that “the Constitution of the Commonwealth mandates all persons have a right to be released on bail prior to trial in all cases” except where the alleged offense is punishable by the death penalty or life in prison or where no condition of release can ensure the safety of the community. *Commonwealth v. Truesdale*, 296 A.2d 829, 831 (Pa. 1972).

⁶ Prior to 1998, the state could only deny bail to those defendants charged with capital offenses. However, in 1998, Article I, Section 14 was amended to allow for the denial of bail to defendants facing life imprisonment and to those defendants who present such a danger that no combination of conditions can assure an individual’s or a community’s safety.

⁷ Pa. R. Crim. P. 524 (comment); *Philadelphia Cmty. Bail Fund v. Arraignment Court Magistrates of the First Judicial Dist.*, No. 21 EM 2019, 2020 Pa. LEXIS 3955, at *3 (July 27, 2020).

before their trial is if a person is facing a capital or life sentence, or where no condition or combination of release conditions can assure the safety of another person or the community.⁸

The Supreme Court of Pennsylvania created the Rules of Criminal Procedure that govern the way bail works. These rules protect the constitutional right to pretrial liberty and deemphasize the use of cash bail.⁹ The rules require that every person, regardless of the type of release, do the following: appear at all times required; obey all orders of the bail authority; give written notice of a change of address; not intimidate or retaliate against witnesses; and refrain from criminal activity.¹⁰

In every county except for Philadelphia, elected officials known as magisterial district judges (MDJs) set bail. Across the state, Pennsylvania has over 500 MDJs who each oversee a small district within one of Pennsylvania’s 67 counties.¹¹ In Philadelphia, appointed officials called arraignment court magistrates (ACMs) set bail. Unlike judges who sit on other courts throughout Pennsylvania, MDJs and ACMs need not be lawyers.¹² Non-lawyers elected to serve as MDJs or appointed to serve as ACMs must complete a 40-hour training program run by the

⁸ PA. CONST. art. I, §14 (amended 1998).

⁹ 25 Pa. Bull. 4100, 4116 (Sept. 30, 1995).

¹⁰ Pa. R. Crim. P. 526(A).

¹¹ THE UNIFIED JUDICIAL SYSTEM OF PENNSYLVANIA, MAGISTERIAL DISTRICT COURT CASELOAD, 2019, <https://www.pacourts.us/news-and-statistics/research-and-statistics/dashboard-table-of-contents/magisterial-district-courts-statewide-dashboard> (last visited Nov. 15, 2021).

¹² PA. CONST. art. V, § 12.

Minor Judiciary Education Board (MJEB) and pass a certification test.¹³

Cash bail is only one of five types of bail that MDJs may select.¹⁴ When deciding which type of bail to assign, an MDJ must first consider release on recognizance (ROR), the least restrictive form of bail, and only assign a different type of release if the bail authority determines that ROR will not reasonably ensure the accused person's appearance and/or compliance with the conditions of the bail bond.¹⁵

¹³ 42 Pa. C.S. §§ 3112, 3113

¹⁴ Pa. R. Crim. P. 524. The five types of bail are: (1) release on recognizance (2) release on non-monetary conditions (3) release on unsecured bail bond (release conditioned upon an agreement to pay a fixed sum of money if, in the future, the person fails to appear in court or comply with the conditions of bail. This is often referred to as a sign-on-bond (SOB)); (4) release on nominal bail (release conditioned upon the defendant depositing a nominal amount of money, such as \$1.00, and a designated person, organization, or bail agency guaranteeing the defendant's future appearance); and (5) release on a monetary condition or cash bail.

¹⁵ *Id.* (comment).

An MDJ may not assign cash bail solely because a defendant faces serious charges.¹⁶ The rules further require that an MDJ conduct a careful individualized assessment of the arrested person and look at multiple factors, including the person's community ties and history of employment.¹⁷ If an MDJ determines that cash bail is necessary to ensure appearance, they must then assess the financial ability of the defendant and should only assign a reasonable bail amount "no[] greater than is necessary to reasonably ensure the defendant's appearance and compliance with conditions of the bail bond."¹⁸

Under Pennsylvania law, MDJs may not impose cash bail for the sole purpose of incarcerating someone until their trial date.¹⁹ Pretrial detention must be the carefully limited exception to pretrial release.

¹⁶ Pa. R. Crim. P. 523 (comment) (stating that the bail authority must "consider all the criteria provided in this rule, rather than considering, for example only the designation of the offense.").

¹⁷ Pa. R. Crim. P. 523(A).

¹⁸ Pa. R. Crim. P. 524(C)(5); *see also* Pa. R. Crim. P. 528(B).

¹⁹ Pa. R. Crim. P. 524 (comment); *Phila. Cmty. Bail Fund v. Arraignment Court Magistrates of the First Judicial Dist.*, No. 21 EM 2019, 2020 Pa. LEXIS 3955, at *3 (July 27, 2020).

Bail in Practice: The Pretrial Process

After an arrest, a police officer takes the person to a booking center, local jail, or magisterial district court for a preliminary arraignment, an initial hearing before an MDJ.²⁰ Depending on the county's practice, preliminary arraignments occur either in-person or via video. The purpose of a preliminary arraignment is for the MDJ to give the person notice of the charges pending against them, determine whether there is probable cause to justify the arrest, and assign bail.

Defense counsel is almost never present at bail hearings. Outside of Philadelphia, only a couple of other public defender offices represent people at arraignment.²¹ The vast majority of people appear at bail hearings without a lawyer to advocate on their behalf. Throughout most of the commonwealth, district attorneys are not present during the preliminary arraignment. Philadelphia is an exception—representatives from the public defender's office and the district attorney's office are both present in the courtroom and the district attorney representative makes bail requests. Outside of Philadelphia, the only people typically present at the arraignment are the defendant, the MDJ, a police officer, sometimes the arresting officer, and, if the hearing occurs in jail, correctional officers.

²⁰ Outside of Philadelphia, when the police arrest someone for a low-level misdemeanor, police have the option to issue a summons. Through a summons, the police do not take the person into custody, but release them with a court date and a command to appear in the future. See Pa. R. Crim. P. 509-510, 519. Those who receive a summons generally remain at liberty until their next court date.

²¹ Public defenders in Allegheny, Luzerne, and Montgomery counties represent some (but not all) people at arraignment.

In handcuffs, guarded by the police, and unaccompanied by a lawyer, family, or friends, the arrested person sits alone, watching the MDJ decide their pretrial freedom over a small TV screen. If the MDJ sets cash bail, the defendant must post the amount in order to be released. If the defendant is unable to pay, they remain incarcerated until the resolution of their case.

**Throughout
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Bail in Practice: The Data

Finding #1

Magisterial district judges routinely set bail in amounts too high for people to afford. More than half of people assigned cash bail did not post it and remained incarcerated.

The data reveals that the average amount of set cash bail was \$38,433. Many counties permit a person to post a percentage of the bail, generally 10%, while other counties require payment in full, also known as “straight bail.” Whether it is \$38,000, or \$3,800, most Pennsylvanians can’t afford it. Put in perspective, \$38,433 is more than half the average household income in the state.²² Most Americans do not have \$500 in savings to cover an emergency, much less the thousands of dollars required to pay for their release.²³

Average bail amount varied widely by county. Armstrong County had the lowest average bail amount at \$15,099, while Bucks County had the highest average, at \$77,462. An MDJ in Bucks County had the highest average bail amount of all MDJs statewide — more than \$600,000.

Across the state, more than half of all people assigned cash bail did not post it. In the two-year period between 2016 and 2017, more than 97,000 cases occurred in which the defendant remained incarcerated until trial.

Even relatively low bail amounts remained out of reach. For example, in Armstrong County, where the average bail amount was the lowest in

²² *Quick Facts Pennsylvania*, UNITED STATES CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/PA/INC110218> (last visited Oct. 6, 2021) (the median household income in Pennsylvania from 2015 to 2019 was \$61,744 in 2019 dollars).

²³ Maggie McGrath, *63% Of Americans Don’t Have Enough Savings To Cover A \$500 Emergency*, FORBES (Jan. 6, 2016), <https://www.forbes.com/sites/maggiemcgrath/2016/01/06/63-of-americans-dont-have-enough-savings-to-cover-a-500-emergency/?sh=3dd7c0fa4e0d>.

the state, people did not post bail in 56.3% of all cases. Across Pennsylvania, a quarter of all people who did not post had bail of \$5,000 or less. For people living in poverty, who might be homeless or experiencing precipitous unemployment, being forced to pay even a few hundred dollars ensures incarceration.

The average statewide bail amount was

\$38,433

— more than half the average household income in Pennsylvania.

Table 1 — Top Ten Counties Where People Did Not Post Bail And Remained Incarcerated

County	% Cases Where Bail Was Not Posted	Total Cash Bail Cases
Bradford	89.3%	814
Jefferson	86.0%	420
Clearfield	83.9%	657
Mifflin	82.3%	661
Forest	81.1%	53
Elk	79.8%	228
Tioga	78.8%	264
Fulton	78.8%	113
Huntingdon	76.7%	497
Franklin	76.6%	1,651

Finding #2 **Cash bail was the most common type of bail set across Pennsylvania, set nearly twice as often as release on recognizance (ROR), the least restrictive type of bail.**

Across Pennsylvania, MDJs imposed cash bail in 43.4% of all cases, employing cash bail more than any other bail type.

Figure 1 — Rate of Cash Bail Versus ROR Across the State

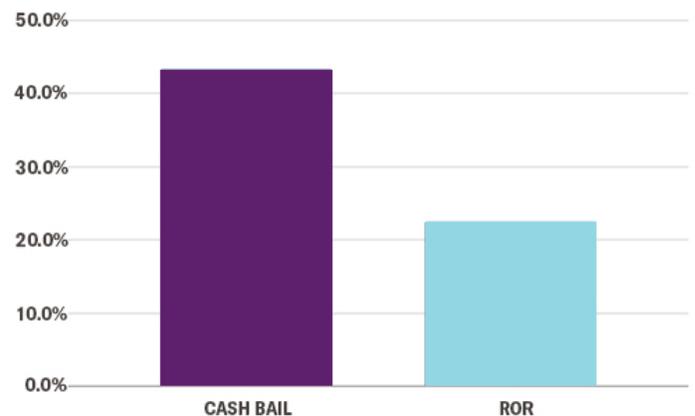
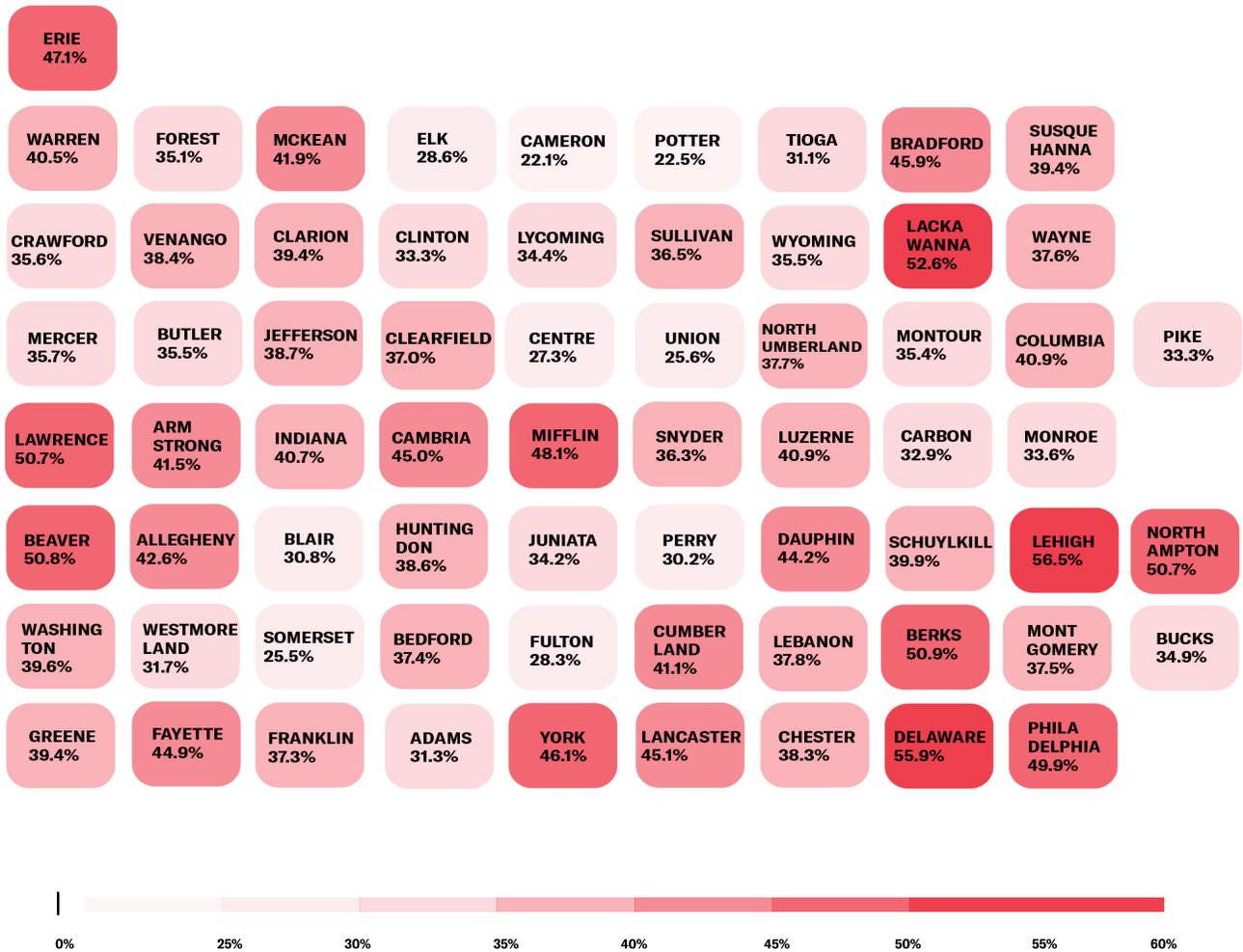


Figure 2 — Cash Bail Rate by County

Darker red counties have a higher rate of cash bail than lighter red counties



Cash bail featured prominently in both rural and urban areas.²⁴ This trend is consistent with mounting research showing that the geography of mass incarceration is shifting: big cities no longer have the highest incarceration rates.²⁵ While pretrial detention rates rose nationally overall, jails in rural America have the highest rates of growth.²⁶

Seven counties used cash bail in more than half of all cases.

Across the state, 41% of MDJs used cash bail more than any other type of bail. In contrast, just 20% of MDJs set ROR more often than any other bail type. Numerous MDJs used cash bail almost exclusively. At the extreme, three MDJs, in Erie, Berks, and Dauphin, each set cash bail 90% or more of the time.

Bail practices varied widely even among the MDJs who serve in the same county. For example, in Armstrong County, one MDJ assigned cash bail at a rate of 61.1%, while another MDJ's cash bail rate was 36.5%. In Blair County, a now-retired MDJ assigned case bail at a rate of 17.8%, whereas in Altoona, five miles down the road, a different MDJ assigned bail in 39.4% of all cases.

²⁴ *Rural Urban Definitions*, THE CENTER FOR RURAL PENNSYLVANIA, https://www.rural.palegislatore.us/demographics_rural_urban.html (last visited Oct. 6, 2021) (“[a] county [] is rural when the number of persons per square mile within the county [] is less than 284. Counties [] that have 284 persons or more per square mile are considered urban.”).

²⁵ JACOB KANG-BROWN & RAM SUBRAMANIAN, VERA INSTITUTE OF JUSTICE, *OUT OF SIGHT: THE GROWTH OF JAILS IN RURAL AMERICA*, at 12 (2017), Richard A. Oppel Jr., ‘A Cesspool of a Dungeon’: The Surging Population in Rural Jails, N.Y. TIMES (Dec. 13, 2019), <https://www.nytimes.com/2019/12/13/us/rural-jails.html>.

²⁶ Kang-Brown & Subramanian, *supra* note 25, at 11-12.

Table 2 — Cash Bail in Urban Versus Rural Counties

Geography	Cash Bail Rate
Urban	45.4%
Rural	37.1%

Table 3 — Counties Where Cash Bail Was Set in More Than 50% of Cases

County	Cash Bail Rate
Lehigh	56.5%
Delaware	55.9%
Lackawanna	52.6%
Berks	50.9%
Beaver	50.8%
Northampton	50.7%
Lawrence	50.7%

Finding #3

Some counties rarely assigned release on recognizance bail.

Statewide, MDJs set ROR in only 22.5% of all cases. Under both the United States and Pennsylvania constitutions, the presumption of innocence is guaranteed before trial. The Pennsylvania Rules of Criminal Procedure direct MDJs to first consider ROR, but MDJs set ROR in less than a quarter of all cases.²⁷

In three counties, the ROR rate was zero. MDJs in Cameron, Elk, and Tioga set ROR in zero percent of all cases over a two-year period. In ten other counties, the ROR rate was less than one half of one percent (less than 0.5%).

²⁷ See discussion *supra*.

Across Pennsylvania, out of 574 MDJs, a total of 123 MDJs assigned ROR at a rate of zero in the two-year period.

On the other hand, a number of counties set ROR in more than half of total cases, surpassing many of their peers. Across the state, 53 MDJs set ROR in 50% or more of all cases.

Finding #4

MDJs imposed cash bail more frequently and in higher amounts for Black people.

In nearly every county across the state, MDJs imposed cash bail on Black people more frequently and in higher amounts compared to white people. Among Black defendants accused of a crime, MDJs set cash bail in 55.2% of cases. In comparison, among white defendants accused of a crime, MDJs imposed cash bail in 38.5% of cases. MDJs imposed cash bail on Black defendants more frequently, and they also imposed higher amounts of bail — on average, \$12,866 more.

Somerset County displayed the severest disparities: for Black people in Somerset, the rate of cash bail was three times the rate for white people; and, when assigned cash bail, the amount was more than double the amount of their white counterparts.

Table 4 — Top 10 Counties with Largest Racial Disparities in Cash Bail Rate

County	Black Cash Bail Rate	White Cash Bail Rate	Rate Ratio
Somerset	70.6%	23.1%	3.1
Centre	49.0%	22.8%	2.1
Lycoming	55.9%	27.7%	2.0
Blair	53.8%	29.1%	1.9
Butler	59.4%	33.1%	1.8
Venango	63.6%	36.0%	1.8
Huntingdon	64.8%	37.0%	1.8
Westmoreland	49.6%	28.8%	1.7
Erie	67.8%	39.4%	1.7
Northumberland	59.1%	35.4%	1.7

Table 5 — Top 10 Counties with Largest Racial Disparities in Cash Bail Amount

County	Black Cash Bail Amount	White Cash Bail Amount	Rate Ratio
Mifflin	\$114,475	\$43,166	2.7
Somerset	\$84,933	\$38,188	2.2
Westmoreland	\$38,193	\$18,989	2.0
Lebanon	\$67,515	\$33,646	2.0
Beaver	\$32,044	\$15,970	2.0
Butler	\$43,726	\$21,801	2.0
Lycoming	\$85,748	\$43,320	2.0
Washington	\$46,258	\$23,939	1.9
Lawrence	\$30,966	\$16,482	1.9
Indiana	\$28,699	\$15,396	1.9

CONCLUSION AND RECOMMENDATIONS FOR REFORM

Under the law, bail is a mechanism for release. In practice, however, according to the data we analyzed, MDJs used cash bail to detain people pretrial. The problem lies not with the law, but with the elected officials who set bail and often failed to follow the law.²⁸

²⁸ Mitali Nagrecha, Sharon Brett & Colin Doyle, *Court Culture and Criminal Law Reform*, 69 DUKE L. J. ONLINE 84, 92 (2020) (“[t]he rise in pretrial incarceration is not so much the result of changes in positive law or policy as it is the result of changing judicial practices and attitudes.”)

We recommend the following reforms to make sure that those who assign bail in the commonwealth are doing so within the scope of the Pennsylvania Rules of Criminal Procedure and the Pennsylvania Constitution.

Magisterial district judges must follow the law.

MDJs should set ROR (release on recognizance) in far more cases and use the least restrictive conditions necessary to guarantee future appearance. MDJs must follow the guidance of the Constitution and the Rules of Criminal Procedure as the norm and use pretrial detention as the carefully limited exception.

Simple tools and processes, such as checklists and standardized forms, can assist MDJs to conduct the careful, individualized assessments required, encourage release on recognizance, and guarantee that monetary bail, if set, is affordable. MDJs should implement these tools during preliminary arraignment.

The Administrative Office of Pennsylvania Courts must promote transparency by analyzing bail data on a regular basis.

Data is essential to understanding bail practices and to driving reform. The raw data exists but remains unanalyzed and largely inaccessible to the public. AOPC must promote greater transparency by regularly analyzing and publishing existing data. AOPC should regularly publish the following information: how often MDJs

set each type of bail; how often MDJs set bails that regularly lead to incarceration; and the racial disparities in bail practices. AOPC should analyze data at the state, county, and MDJ level to discern broad trends and identify local practices in need of reform.

President judges must exercise supervisory authority over the magisterial district judges whom they oversee.

President judges have the responsibility to oversee MDJs in their judicial district. As the sole mechanism of oversight, president judges must ensure that the MDJs under their supervision follow the law. The Pennsylvania Rules of Judicial Administration provide president judges with the powers necessary for such supervision.²⁹ President judges may order procedural audits to assess whether MDJ practices conform with the law. An audit may consist of court observations, reviews of court records, and reviews of bail data. These audits should be conducted annually and their

²⁹ Pa.R.J.A. 605

findings made available to the public. President judges may also require individual and collective meetings with MDJs.³⁰ These meetings may be opportunities for continuing education. For example, president judges may use these meetings to educate MDJs on the devastating harms of pretrial detention and emphasize the importance of reform. By bringing judges together, these meetings can help build the will and commitment needed for reform.

³⁰ *Id.* at 605(B)(1)

Courts and jails must work together to install safeguards that guarantee no person is incarcerated only because they are unable to pay bail.

To avoid the lasting and profound harms of incarceration, local jails must closely track their population and alert the magisterial district court when a person has been incarcerated due to inability to pay cash bail. An alert should be automatically triggered in the system after

48 hours of incarceration. The court must then reassess the case, determine why that person was incarcerated on cash bail in violation of the Rules of Criminal Procedure and the Pennsylvania Constitution, and arrange for them to be released.

METHODOLOGY

The ACLU of Pennsylvania obtained the data used in this report from the Administrative Office of Pennsylvania Courts (AOPC). The dataset covers the two-year period from 2016 to 2017, and consists of 383,317 cases.

The analysis looked at the initial bail set at preliminary arraignment. We only analyzed cases where MDJs set bail and did not analyze cases where MDJs denied bail altogether. A person may have multiple cases in the dataset; therefore, the numbers reported in our findings reflect numbers of cases, not numbers of people.

In calculating the average bail amount, we used a winsorized mean—a statistical analysis that replaces the extreme values of the data with a specified percentile in order to reduce the influence of outliers.³¹ Our analysis set all data points above the 99th percentile equal to the 99th percentile. Thus, averages reported in our findings are less sensitive to, or less skewed by, extreme bail amounts.

In our analysis of individual MDJs, we only included MDJs who set bail in 100 or more cases in the dataset. However, MDJs who did not meet this 100-case threshold were otherwise included in all other aspects of the report.

In the analysis of racial disparities at the county level, we excluded counties with fewer than 50 cases involving a Black defendant. These counties were otherwise included in all other aspects of the report.

³¹ BRUCE E. BLAINE, THE SAGE ENCYCLOPEDIA OF EDUCATIONAL RESEARCH, MEASUREMENT, AND EVALUATION, WINSORIZING 1817 (2018).

Limitations

The findings in this report reflect bail practices from 2016 through 2017. As of publication, five years have elapsed since the start date of the data. Clean Slate, a law that went into effect on June 28, 2019,³² automatically expunged and sealed certain cases from public view.³³ As a result, any dataset requested after June 28, 2019, will miss a number of cases, and, therefore, we chose to rely on the earlier complete data set for our analysis.

This report only examines Black-white disparities in bail practices. AOPC data fails to recognize Latinx as a distinct racial group (using only Black, White and Asian), miscoding Latinx individuals instead as white. As a result, we cannot explore potential disparities for Latinx populations or any other diverse populations.³⁴ AOPC's practice of including Latinx people in the "white" category can make the white-black gap in racial disparities appear smaller than it actually is.

In our analysis, we only examine whether or not people posted bail, so our analysis does not account for probation or parole detainers. A parole department or judge may lodge a detainer that holds a person in custody regardless of whether or not they pay bail in their new case.³⁵ People on probation with detainers lodged against them may therefore not post bail, as the detainer will hold them in jail until the resolution of the new matter, regardless of the bail assigned. AOPC does not capture detainer information in the dockets.

³² Clean Slate, H.B. 1419, 202d Gen. Assemb., Reg. Sess. (Pa. 2018).

³³ 18 PA. CONS. STAT. § 9122.2

³⁴ Schlesinger, *supra* note 4 at 2.

³⁵ ALLISON FRANKEL, HUMAN RIGHTS WATCH & ACLU, REVOKED: [HOW PROBATION AND PAROLE FEED MASS INCARCERATION IN THE UNITED STATES](#), at 16, 90 (2020).

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