



JULY 2020

Rhetoric vs. Reality:

The Unacceptable Use of Cash Bail by the Philadelphia District Attorney's Office During the COVID-19 Pandemic

Philadelphia Bail Fund



ACKNOWLEDGMENTS

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Most importantly, we are grateful to the two people bailed out by the Philadelphia Bail Fund who agreed to include their stories in this report. We are thankful for their involvement and commitment to challenging the dehumanization that is at the very root of the injustice of cash bail.

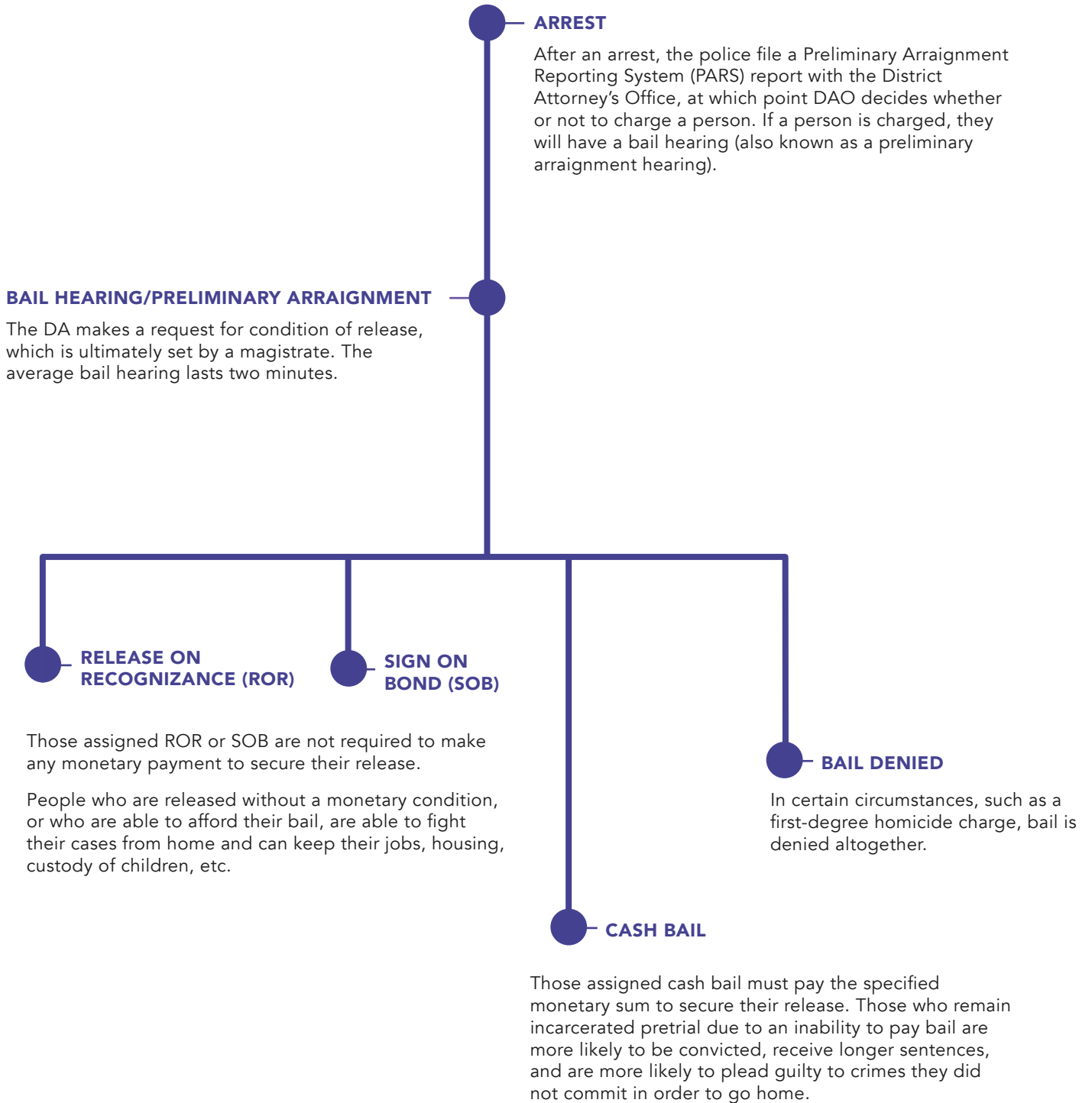
ABOUT THE PHILADELPHIA BAIL FUND

The Philadelphia Bail Fund is a revolving fund that posts bail for people who cannot afford bail. Our goal is to keep families and communities together and to abolish wealth-based detention and pretrial punishment in Philadelphia. Since January 2018, the Philadelphia Bail Fund has helped free 435 people from pre-trial detention in Philadelphia, including 275 people since the start of the coronavirus pandemic.

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HOW BAIL 'WORKS'



BAIL, IN PRACTICE, IS A KEY TOOL IN A SYSTEMICALLY RACIST LEGAL SYSTEM THAT DISPROPORTIONATELY PUNISHES POOR BLACK AND BROWN COMMUNITIES BY IGNORING THE PRESUMPTION OF INNOCENCE.

TIMELINE



MARCH 17, 2020

- Philadelphia Police Department (PDP) Commissioner Outlaw issues memo directing police to not arrest on certain charges, including all narcotics offenses, theft from persons, retail theft, burglary, and others.²
- The First Judicial District (FJD) of Pennsylvania announces closure of courts.

MAR.
16

MARCH 16, 2020

- Philadelphia District Attorney's Office (DAO) announces new bail policy¹ to request either \$999,999 cash bail or release without payment.
- City of Philadelphia announces closure of all non-essential operations to reduce the spread of COVID-19.

MAR.
17



MAR.
21

MARCH 21, 2020

- DAO requests \$999,999 for the first time at bail hearing.

MAR.
27

MARCH 27, 2020

- Philadelphia jails announce first two positive cases of COVID-19.

APR.
14

APRIL 14, 2020

- First COVID death in Philadelphia jails.



MAY
01

MAY 1, 2020

- Commissioner Outlaw announces rollback of COVID arrest freeze, resuming normal arrest practices.³

¹ Philadelphia DAO, "District Attorney Krasner Announces Acceleration of DAO Reforms in Response to COVID-19 Emergency," March 16, 2020, <https://medium.com/philadelphia-justice/district-attorney-krasner-announces-acceleration-of-dao-reforms-in-response-to-covid-19-emergency-e2340f587f25>.

² "Outlaw Memo," contributed by: Samantha Melamed, Philly.com, March 17, 2020, <https://www.documentcloud.org/documents/6811943-Outlaw-Memo.html>.

³ Max Marin, "Philly police roll back COVID freeze, resume arrests for burglaries, theft and other offenses," Billy Penn (May 1, 2020), <https://billypenn.com/2020/05/01/philly-police-roll-back-covid-freeze-resume-arrests-for-burglaries-theft-and-other-offenses/>.

INTRODUCTION

Philadelphia District Attorney Larry Krasner arrived in office in January 2018 promising to end cash bail in Philadelphia. The following month, his office announced “bail reform phase one,”⁴ which tweaked the bail practices of DA Krasner’s predecessors and resulted in “no detectable effect on pretrial incarceration” in Philadelphia.⁵ For two years, nothing changed: DA Krasner’s representatives continued requesting bail, and continued caging Philadelphians - overwhelmingly Black - for their inability to pay a ransom.⁶

When the COVID-19 pandemic hit Philadelphia earlier this year, public health experts warned that jails and prisons would be viral hotspots. In response, DA Krasner instituted a new cash bail policy, one he insisted would “decouple pretrial incarceration from an ability to pay.”⁷ Under the new policy, in every case initiated his office would make one of two bail requests: 1) release without payment (no cash bail), or 2) \$999,999 bail.⁸

On its face, this policy appears to mirror the Defender Association’s proposed plan to fundamentally change Philadelphia’s pre-trial system.⁹ Under the Defender’s plan, the vast majority of arrestees would be released without payment following arraignment, with the remainder receiving a detention hearing where the prosecution would have to justify pretrial incarceration. In August 2019, as part of ongoing litigation on bail practices in Philadelphia, DA Krasner effectively agreed to such a plan and requested the PA Supreme Court approve it,

stating that “impos[ing] bail conditions on defendants in order to detain a person before trial [is] not only... unconstitutional, it fails to take into account a defendant’s ability to pay.”¹⁰

DA Krasner’s new policy, however, directly contradicts the proposal and his statement in two crucial ways. First, an ordinary bail hearing lacks the procedural protections guaranteed in a detention hearing. Second, the outcome he seeks by requesting \$999,999—that is, incarcerating people pretrial on a monetary bail with no ability to obtain their freedom—is, as he acknowledged, illegal under Pennsylvania law, which prohibits monetary bail from being imposed “for the sole purpose of ensuring that a defendant remains incarcerated until trial.”¹¹ DA Krasner’s new policy attempts to skirt the law by seeking million-dollar bails as de facto detention orders.

“DA KRASNER’S NEW POLICY ATTEMPTS TO SKIRT THE LAW BY SEEKING MILLION-DOLLAR BAILS AS DE FACTO DETENTION ORDERS.”

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- ⁴ Philadelphia DAO (@philadao), Twitter, February 21, 2018, <https://twitter.com/philadao/status/966403471107940353?s=20>; Philadelphia DAO, “Larry Krasner Announces End to Cash Bail in Philadelphia for Low-Level Offenses,” February 21, 2018, <https://phillyda.wordpress.com/2018/02/21/larry-krasner-announces-end-to-cash-bail-in-philadelphia-for-low-level-offenses/> (“Effort marks the first, of an ongoing review of cash bail.”).
- ⁵ Aurelie Ouss and Megan Stevenson, Bail, Jail, and Pretrial Misconduct: The Influence of Prosecutors (June 20, 2020). Available at SSRN: <https://ssrn.com/abstract=3335138>.
- ⁶ Philadelphia Bail Fund, Observations of 125 Recent Bail Requests (May 8, 2019), <https://www.phillybailfund.org/da-report>.
- ⁷ Samantha Melamed, “Amid coronavirus threat, Philadelphia will follow New Jersey and New York City in a push to cut the jail population,” Philadelphia Inquirer (March 25, 2020), <https://www.inquirer.com/health/coronavirus/coronavirus-closed-courts-philadelphia-jail-population-da-larry-krasner-20200325.html>.
- ⁸ Philadelphia DAO, “District Attorney Krasner Announces Acceleration of DAO Reforms in Response to COVID-19 Emergency,” March 16, 2020, <https://medium.com/philadelphia-justice/district-attorney-krasner-announces-acceleration-of-dao-reforms-in-response-to-covid-19-emergency-e2340f587f25>.
- ⁹ Defender Association of Philadelphia, “Philly.com: Philly leaders want to end cash bail. Can they agree on how?” May 14, 2019, <https://www.philadefender.org/philly-com-philly-leaders-want-to-end-cash-bail-can-they-agree-on-how/>.
- ¹⁰ See Larry Krasner and Keir Bradford-Grey, “Joint Submission to Special Master. Pre-Trial Reform Proposal of The Defender Association of Philadelphia & The Philadelphia District Attorney’s Office,” August 16, 2019, https://www.aclupa.org/sites/default/files/field_documents/response_-_district_attorney_-_1-30-20_1.pdf.
- ¹¹ 234 Pa. Code Rule 524 (comment).

Beyond these inherent distinctions, DA Krasner has not applied his new policy in nearly the limited way he suggested he would, further widening the gap between this policy and other policies it claims to mirror. DA Krasner uses his policy to seek de facto pretrial detention for a strikingly large percentage of people. In our analysis of 451 randomized bail hearings since the policy's implementation on March 21 until May 21, 2020, **we found the District Attorney's Office requested \$999,999 bail in 53 percent of those cases.** Seventy-nine percent of those subject to such requests are Black. To be clear: our analysis indicates that if DA Krasner had his way, over half of people awaiting trial would be sitting in jail cells. DA Krasner justifies the policy by saying his office is requesting high bails *"if you're shooting people, [or] probably because you raped someone...."*¹² That rhetoric preys on people's worst fears and is deeply misleading. More to the point, it demonstrates the disconnect between the policy's stated goal and its implementation. In fact, only 5 percent of all cases we reviewed included lead charges of rape, attempted murder, or discharge of a firearm.

Luckily, Philly's bail magistrates—themselves no progressive heroes¹³—have refused to go along with DA Krasner's scheme, and have continued setting bail at more or less pre-pandemic levels (already unacceptable and unconstitutional behavior).¹⁴ In 87% of the cases reviewed, bail magistrates set a lower bail than DA Krasner requested, including sixteen instances (7%) where magistrates ordered a person released against the District Attorney's wishes. A similar pattern emerges when the lead charge is PWID (Possession With Intent

to Deliver) - a charge the Philadelphia Police temporarily deemed non-essential in an effort to limit the spread of COVID-19.¹⁵

Philadelphia elected District Attorney Larry Krasner on a promise to end cash bail and dramatically decrease pretrial incarceration. Instead, with his most recent policy change — which he calls "courageous"¹⁶ — he attempts to incarcerate half of arrestees, all of whom are legally innocent. By contrast, Washington, D.C. and New Jersey—two jurisdictions to which DA Krasner has pointed as a model¹⁷—incarcerate approximately six (6) percent of people awaiting trial.¹⁸ Apparently, DA Krasner's ideal rate of pretrial incarceration is nearly nine times that of D.C. and New Jersey.

DA Krasner's bail policies and practices have been unacceptable for the past two years; they are even more unacceptable when pretrial incarceration could be a death sentence as a result of the COVID-19 pandemic, as DA Krasner readily acknowledges;¹⁹ and they are especially unacceptable now when DA Krasner claims to be in solidarity with organizers fighting for racial justice. His office's policies suffocate poor Black people of opportunity, of justice, of freedom.

This report seeks to expose the truth behind DA Krasner's recently adopted bail policy, and demonstrate its pernicious effect on pretrial release and how it is further embracing—rather than eliminating—the cash bail system in Philadelphia.

¹² Philadelphia City Council Budget Hearing, Committee of the Whole, District Attorney Testimony, June 8, 2020, https://www.youtube.com/watch?v=K5hYfID2W98&feature=emb_title.

¹³ See ACLU of Pennsylvania, "PCBF, YASP, and Individual Plaintiffs v. Arraignment Court Magistrates of the First Judicial District," March 12, 2019, <https://aclupa.org/en/cases/philadelphia-community-bail-fund-youth-art-self-empowerment-project-and-individual-plaintiffs>.

¹⁴ See ACLU of Pennsylvania, "A Letter to FJD Regarding Bail," September 11, 2018, https://aclupa.org/sites/default/files/field_documents/a_letter_to_fjd_regarding_bail_9.11.2018_0.pdf.

¹⁵ Max Marin and Ryan Briggs, "Philly police to halt narcotics arrests, other charges during COVID outbreak," Billy Penn (March 17, 2020), <https://billypenn.com/2020/03/17/philly-police-to-halt-narcotics-arrests-other-charges-during-covid-outbreak/>.

¹⁶ Black Male Engagement PHL, "Community Advisory Committee Town Hall," at 54:02, Facebook (June 23, 2020), <https://www.facebook.com/BlackMalesPHL/videos/2754396658117445/>.

¹⁷ Philadelphia DAO, "District Attorney Krasner Announces DAO Review Effort to Address Growing Case Load, Protect Public From COVID-19," June 11, 2020, <https://medium.com/philadelphia-justice/district-attorney-krasner-announces-dao-review-effort-to-address-growing-case-load-protect-public-22599ea87509>.

¹⁸ Pretrial Service Agency for the District of Columbia, "FY 2019 Release Rates for Pretrial Defendants within Washington, DC," <https://www.psa.gov/sites/default/files/2019%20Release%20Rates%20for%20DC%20Pretrial%20Defendants.pdf>; NJ Courts, "Criminal Justice Reform Statistics," <https://njcourts.gov/courts/assets/criminal/cjrreport2020.pdf?c=QJX>.

¹⁹ Philadelphia DAO, "District Attorney Krasner Calls on Philadelphia Courts to Take Action During Coronavirus Emergency," March 23, 2020, <https://medium.com/philadelphia-justice/district-attorney-krasner-calls-on-philadelphia-courts-to-take-action-during-coronavirus-emergency-16f2a5f3ac71> ("Jails and prisons are landlocked cruise ships, with people in extremely close quarters and supplies such as soap and sanitation products drying up. Safely and swiftly depopulating corrections facilities is a matter of life or death for all of us, including corrections officers, health care professionals, and all corrections workers and their families; law enforcement and attorneys; incarcerated people, including those who have not been convicted of crimes; and communities at large.").

KEY FINDINGS

Based on our analysis of 451 randomized bail hearings between March 21 and May 21, 2020.

FINDING 1

THE DISTRICT ATTORNEY'S OFFICE ("DAO") REQUESTED \$999,999 BAIL IN OVER 50% OF CASES WE REVIEWED.

- Between March 21 and May 1, the period during which the temporary PPD policy in response to COVID-19 limited arrests to only certain types of charges, the DAO requested \$999,999 cash bail in 55% of cases reviewed.
- During the period between May 2 and May 21, after the temporary PPD policy limiting arrests due to COVID-19 ended on May 1, the DAO continued requesting \$999,999 cash bail in 50% of cases reviewed.
- Overall, between March 21 and May 21 the DAO requested \$999,999 cash bail in 53% of cases reviewed.

FINDING 2

THE DAO REQUESTED \$999,999 FOR NUMEROUS CHARGES, INCLUDING SOME CASES WHERE THE LEAD CHARGE WAS A MISDEMEANOR OR PWID (DRUG POSSESSION WITH INTENT TO DISTRIBUTE).

- Despite District Attorney Krasner's frequent implication that his office is only requesting bail in the most extreme cases - those involving allegations of shooting or rape - such cases only made up 5% of the cases we reviewed in which his office requested \$999,999 bail between March 21 and May 21.
- Even the more expansive list of charges for which the DAO stated they would request bail – aggravated assault, rape, robbery, and being a felon in possession of a firearm – made up only 40% of the cases we reviewed in which the DAO requested \$999,999 bail.
- Between May 2 and May 21 the DAO requested \$999,999 cash bail in 33% of PWID (drug possession with intent to distribute) cases that we reviewed.

FINDING 3

BAIL MAGISTRATES, WHILE STILL SETTING BAIL AT DISTURBINGLY HIGH RATES, RARELY GRANTED THE DAO'S REQUEST TO SET BAIL AT \$999,999.

- In 87% of the cases that we reviewed in which bail was set, bail magistrates set a lower bail than the DAO requested, including sixteen instances where magistrates ordered a person released despite the District Attorney's request that cash bail be set.
- In over 50% of the cases we reviewed in which the District Attorney's Office requested \$999,999, magistrates set bail at \$50,000 (\$5,000 needed for release) or below.
- Had magistrates granted every \$999,999 bail request, 237 people would have been detained in Philadelphia jails for a total ransom of about \$23.7 million. The \$999,999 bail amount would have barred these people from Early Bail Review eligibility, thus making pre-trial detention very likely until the conclusion of the case.²⁰

FINDING 4

THE DAO'S CASH BAIL REQUESTS HAVE OVERWHELMINGLY TARGETED POOR, BLACK COMMUNITIES.

- Of the 237 cases we reviewed in which the DAO requested cash bail in the amount of \$999,999 between March 21 and May 21, over 90% of those subject to such a request were assigned public counsel because they could not afford an attorney.
- Of the 237 cases we reviewed in which the DAO requested cash bail in the amount of \$999,999 between March 21 and May 21, approximately 80% of those subject to such a request were Black.

²⁰ Early Bail Review (EBR) is a Safety and Justice Challenge Initiative, sponsored by the MacArthur Foundation, which allows the Philadelphia Municipal Court to hold bail review hearings within 5 to 7 business days after bail is set. The program offers a chance for early release for people charged with crimes that do not involve sex, children, or firearms, and whose bail is set at \$100,000 or below. At these hearings, a Municipal Court Judge may eliminate monetary bail conditions, reduce bail, or in some cases, increase bail. However, if bail was set at the amount the DAO requested (\$999,999), all of these people would be excluded from this chance of early release per the First Judicial District's internal policies.

METHODOLOGY

To document bail practices in Philadelphia, this report uses data scraped and downloaded from the First Judicial District (FJD) of Pennsylvania’s online portal, supplemented by data provided by the Defender Association of Philadelphia. In this section, we describe our data sources, methods, and limitations.

SOURCE

The bail data presented in this report was obtained from the FJD’s publicly accessible “New Criminal Filings” website. The site includes, by date, information on all new criminal filings (i.e., bail hearings) in Philadelphia, including name, age, and zip code for each individual arraigned, and the docket number, filing date, charge/s, attorney, bail status, bail type, and bail amount for each case. Data on race and sex was obtained by using the FJD’s docket portal to examine court summaries for each individual.

Data on the District Attorney’s Office’s bail requests presented in this report was obtained from the Defender Association of Philadelphia. The Defender Association represents nearly every individual at the time of arraignment (also known as the bail hearing) and documents the cash bail amount and other conditions requested by the DAO and issued by the magistrate for each case.

METHODS

To compile the data used in this report, we used the following methods.

We scraped and downloaded information on all bail hearings from March 21, 2020 to May 21, 2020. We then randomized all bail hearings by docket number to compile a list of 451 hearings in total.

We began on March 21, 2020 because it is the first instance we documented of a DAO request for \$999,999 bail. We ended on May 21, 2020 to have a full two months of data while excluding bail hearings involving arrests from protests, which began on May 30, 2020. Bail hearings during the time of protest were atypical in terms, volume, charges, and release conditions.

For our analysis of cases where PWID was the lead charge, we selected all cases from May 2, 2020 to May 21, 2020. We then searched each individual docket to eliminate cases where an individual faced another charge (e.g., gun possession, aggravated assault, etc.).

We chose May 2, 2020 as a start date for the PWID analysis because the Philadelphia Police Department announced a resumption of narcotic arrests on May 1.²¹ We analyzed PWID charges in particular to examine how the DAO responded to one of the most common victimless offenses.²² Our analysis showed the DAO requested \$999,999 even in these cases, countering DA Krasner’s insistence that he needs to request unaffordable bails because, for instance, “somebody is being held for five homicides.”²³ A review of PWIDs demonstrates DA Krasner’s tendency to mislead the public about his own policies.

²¹ Max Marin, “Philly police roll back COVID freeze, resume arrests for burglaries, theft and other offenses,” Billy Penn (May 1, 2020), <https://billypenn.com/2020/05/01/philly-police-roll-back-covid-freeze-resume-arrests-for-burglaries-theft-and-other-offenses/>.

²² Notably, in February 2018, the District Attorney’s Office announced that it would not seek cash bail for 25 “low-level offenses,” including PWID charges, subject to certain exceptions. See Philadelphia DAO, “Larry Krasner Announces End to Cash Bail in Philadelphia for Low-Level Offenses,” February 21, 2018, <https://phillyda.wordpress.com/2018/02/21/larry-krasner-announces-end-to-cash-bail-in-philadelphia-for-low-level-offenses/>.

²³ Black Male Engagement PHL, “Community Advisory Committee Town Hall,” at 54:12, Facebook (June 23, 2020), https://www.facebook.com/watch/live/?v=2754396658117445&ref=watch_permalink. This rhetoric is especially outlandish because people charged with homicide are not eligible for bail in the first place.

Once both lists were compiled, we sent both to the Defender Association to input the District Attorney's bail request for each case and to verify the lead charge for each individual bail hearing.

LIMITATIONS

We analyzed a randomized sample of 451 hearings, so our data does not reflect analysis of a complete list of hearings conducted during the time period. However, we believe our randomized sample offers an unbiased and accurate representation of bail hearings from March 21 - May 21.

The Philadelphia court system does not recognize Latinx or Indigenous as a race. Instead, it appears to record most non-Black and non-Asian people as white. It is therefore difficult to assess the impact of DA Krasner's bail practices on these communities. Similarly, the Philadelphia court system does not recognize gender non-conforming individuals and instead labels each person as "male" or "female." Additionally, our zip code analysis uses zip codes listed in court records. These zip codes do not always accurately reflect a person's current address.

Publicly available information does not indicate whether a detainer has been lodged against an individual. Sometimes detainers—which are lodged pursuant to a parole or probation violation from a previous conviction and cause a person to be held regardless of whether bail is set—affect bail decisions. We are unable to account for this potential variation, but it is minor: its only common effect is to cause magistrates to assign low bail where otherwise they would have released without payment.

A NOTE ON CHARGES

Everyone charged with a criminal offense is presumed innocent until proven guilty. All charges are allegations at the time of a bail hearing. Moreover, prosecutors often overcharge as means of pressuring people into guilty pleas and charges can be downgraded or dropped later in a case. In fact, as of last year, in all of our resolved cases, 71% were dismissed or withdrawn before trial.²⁴

The Philadelphia Bail Fund believes that the presumption of innocence applies uniformly, regardless of charge. Our inclusion of charge breakdowns does not imply support for charge-based classification of individuals. However, we think it necessary to include a charge-based analysis in this report to demonstrate that the DAO's actions do not match DA Krasner's promises to the public, and that there appears to be no real limiting principle to his cash bail policy.

²⁴ Philadelphia Bail Fund, A Window Into a Future Without Cash Bail: A Snapshot Report on Resolved Cases of the Philadelphia Bail Fund, November 2019, <https://www.phillybailfund.org/case-outcomes>.

PUTTING DAO'S BAIL POLICY IN PERSPECTIVE

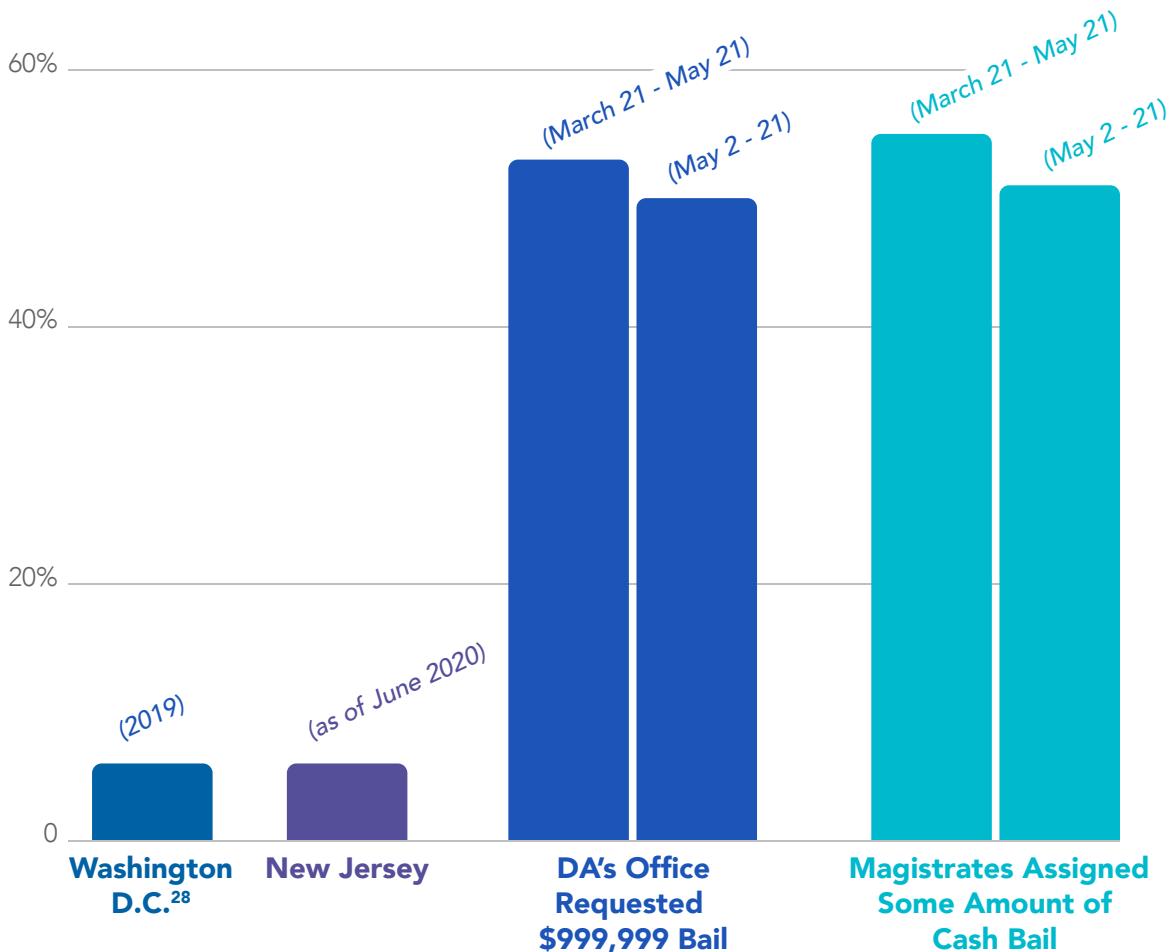
District Attorney Larry Krasner often cites Washington, D.C. and New Jersey—two jurisdictions without cash bail—as models for ending cash bail in Philadelphia. In fact, in justifying their requests for \$999,999 bails (intended to have the impact of a detention order), the District Attorney's Office stated they are doing so because it will "help to move Philadelphia closer to a system without cash bail, where people are either held or not held, as is the practice in Washington, D.C., and New Jersey."²⁵

In practice, the District Attorney's Office's new bail policy bears little to no resemblance to the bail practices

in Washington, D.C. or New Jersey. In each of those jurisdictions a small percentage (approximately 6%) of people are held pretrial because they are believed to pose a serious risk to public safety. Though DA Krasner professes to be motivated by the same goal - to detain those who pose a serious risk to public safety pretrial²⁶ - the evidence reveals the disingenuousness of his position.

In 451 randomly selected arraignment hearings in Philadelphia, the District Attorney's Office requested detention in over 50% of cases. This is nearly nine times the pretrial incarceration rate of D.C. and New Jersey.²⁷

PRE-TRIAL DETENTION: A COMPARISON



²⁵ Philadelphia DAO, "District Attorney Krasner Announces DAO Review Effort to Address Growing Case Load, Protect Public From COVID-19," June 11, 2020, <https://medium.com/philadelphia-justice/district-attorney-krasner-announces-dao-review-effort-to-address-growing-case-load-protect-public-22599ea87509>.

²⁶ Philadelphia DAO, "Acceleration of DAO Reforms."

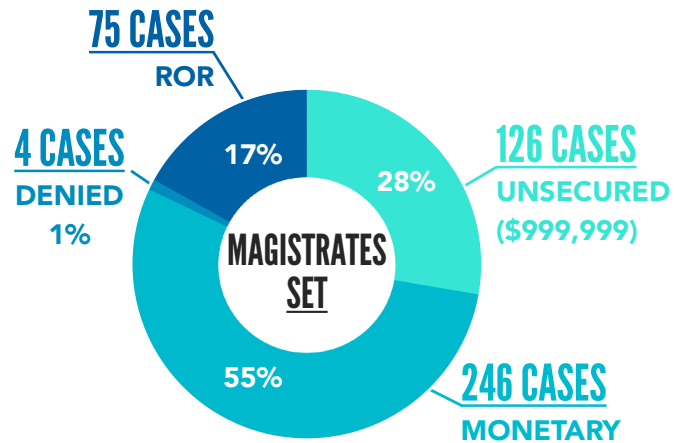
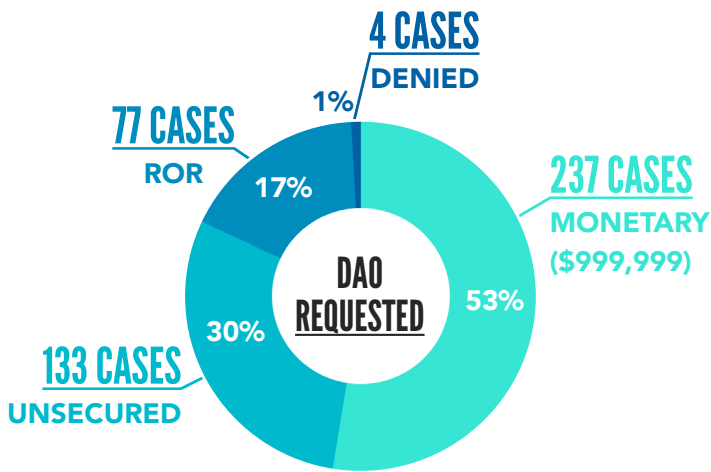
²⁷ Pretrial Service Agency for the District of Columbia, "FY 2019 Release Rates for Pretrial Defendants within Washington, DC," <https://www.psa.gov/sites/default/files/2019%20Release%20Rates%20for%20DC%20Pretrial%20Defendants.pdf>; NJ Courts, "Criminal Justice Reform Statistics," <https://njcourts.gov/courts/assets/criminal/cjrreport2020.pdf?c=QJX>.

²⁸ Approximately 15% of people arrested in D.C. are held for 3-5 days pending a full-scale detention hearing; ultimately only 6% of arrestees are detained following these hearings, for the entire pretrial period.

DATA OVERVIEW

DATE RANGE: MARCH 21 - MAY 21 **451 HEARINGS**

OVERVIEW OF BAIL HEARING OUTCOMES



DAO'S BAIL REQUESTS COMPARED TO MAGISTRATE'S BAIL ASSIGNMENT

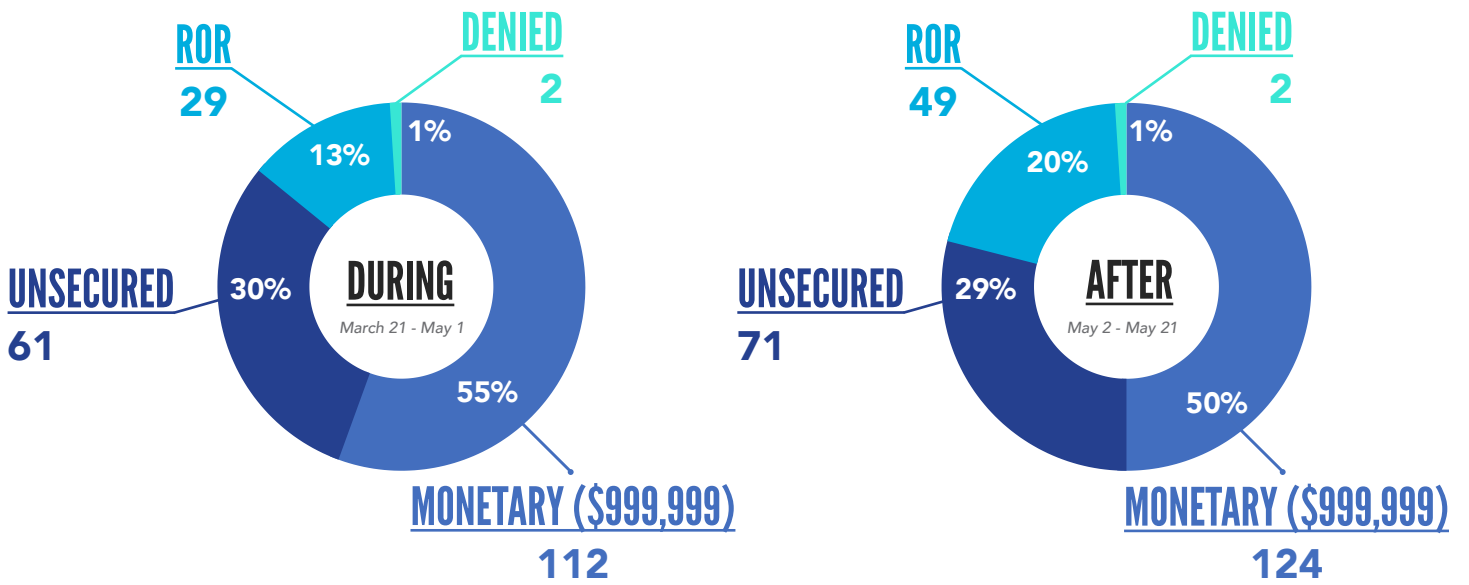
In 246 cases where cash bail was set



\$23.7M BAIL REQUESTED BY DAO **VS.** **\$3.5M** BAIL SET BY MAGISTRATE²⁹

²⁹ Note: this is the amount it would take to free everybody. Technically, the amount assigned is ten times greater, as people assigned monetary bail have to pay 10% of the assigned bail for release.

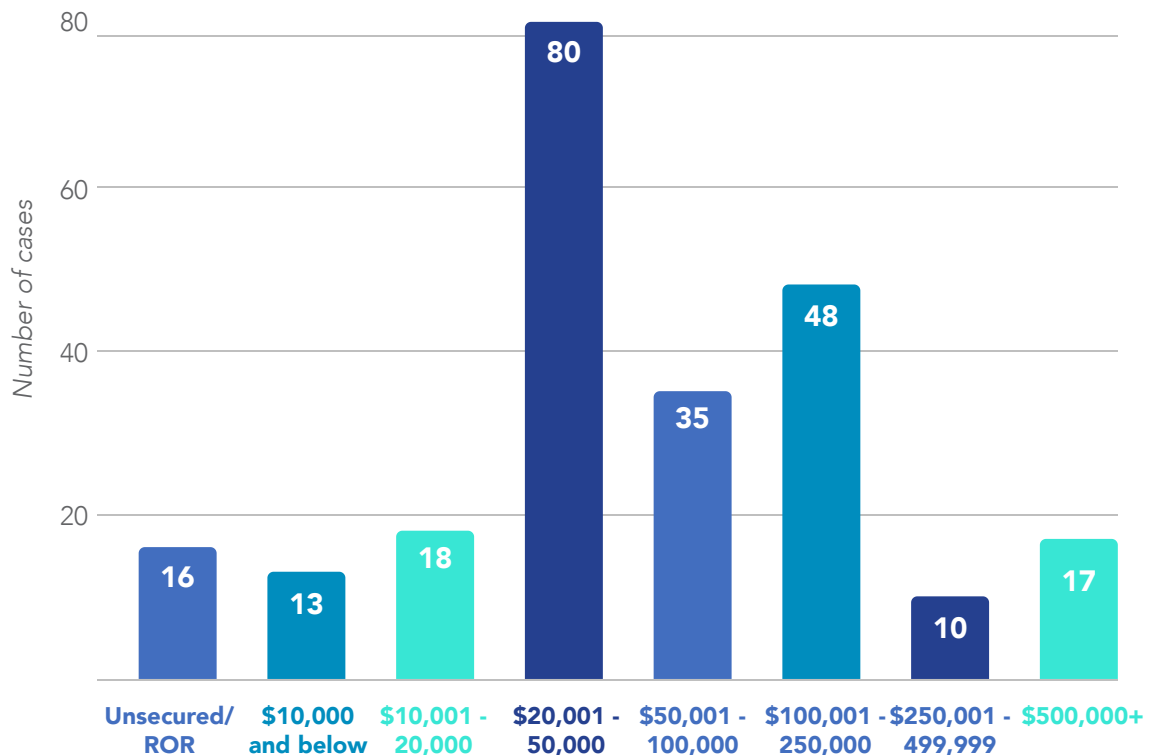
DAO REQUESTS PRE AND POST RESUMPTION OF CERTAIN LOW LEVEL ARRESTS



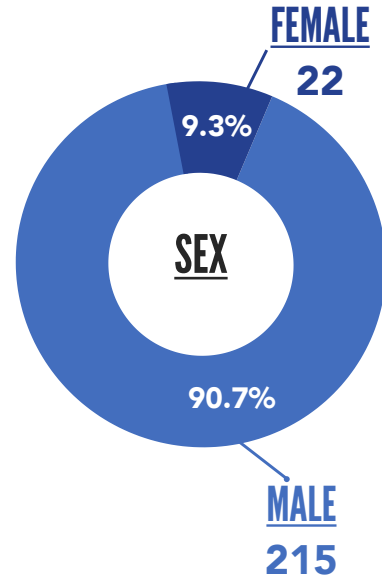
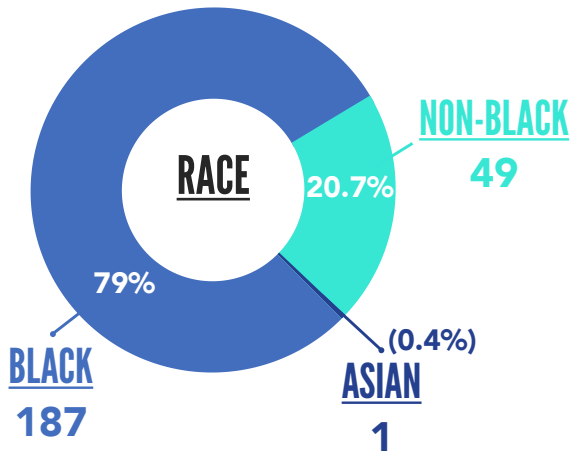
OF THE 237 \$999,999 DAO BAIL REQUESTS, HOW DID MAGISTRATES RESPOND?

March 21 - May 21

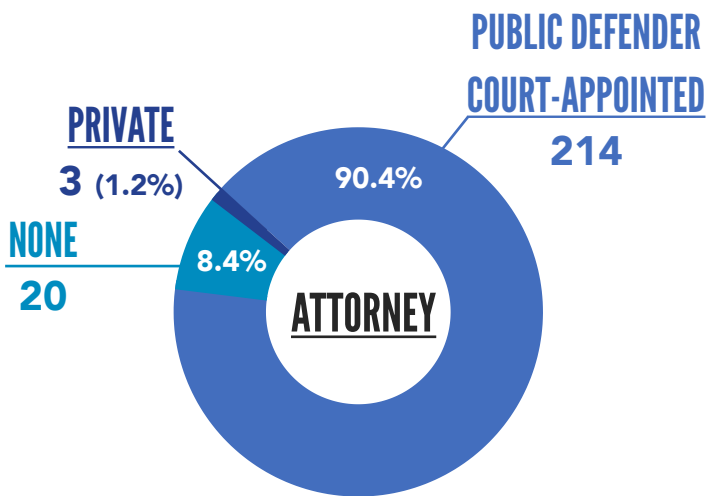
Over 50% of cases for which the DAO requested \$999,999 received cash bail under \$50,000



DEMOGRAPHIC BREAKDOWN OF DAO'S 237 \$999,999 CASH BAIL REQUESTS



Nearly 80% of those subject to a \$999,999 bail request were Black. In addition, over 90% of people in these cases were assigned a public defender or court-appointed attorney because the Court deemed that, due to their low-economic status, they were unable to afford a private attorney.



ZIP CODES MOST IMPACTED:

19134, 19132, 19121
19143, 19120

WHAT IS THE POLICY? RHETORIC VS. REALITY

RHETORIC:

"We adopted a fairly strict policy that we would either seek extremely high bail or no bail... Because we felt like if you're shooting people, probably because you raped someone... you need to stay in jail. That's the bottom line. So, we have issued what is essentially a million dollars bail, or issued ROR/SOB bail, or in other words you don't have to pay anything."

— District Attorney Larry Krasner,
City Council Budget Hearing, June 8, 2020³⁰

REALITY:

To justify and explain his new policy, the District Attorney relies on the traditional law enforcement playbook: preying on people's fear to stymie serious discussion about the harms of his office's policy. The implication by DA Krasner that people alleged to have committed the crimes mentioned above make up most, all, or even many of his office's \$999,999 bail requests is false and misleading.

Of all the cases we examined where the District Attorney's Office requested \$999,999, individuals charged with *Criminal Attempt- Murder, Criminal Attempt- Rape, Rape Forcible Compulsion, Murder of the Third Degree, Discharge of A Firearm into Occupied Structure* made up 5% (12 cases).



RHETORIC:

"DAO has consistently recommended either that defendants be released without cash bail (ROR/SOB) or, for serious violent offenses like Aggravated Assault, Rape, Robbery, and being a felon in possession of a firearm, high bail amounts of \$999,999."

—District Attorney Krasner Announces DAO Review Effort to Address Growing Caseload, Protect Public From COVID-19, June 11, 2020³¹

REALITY:

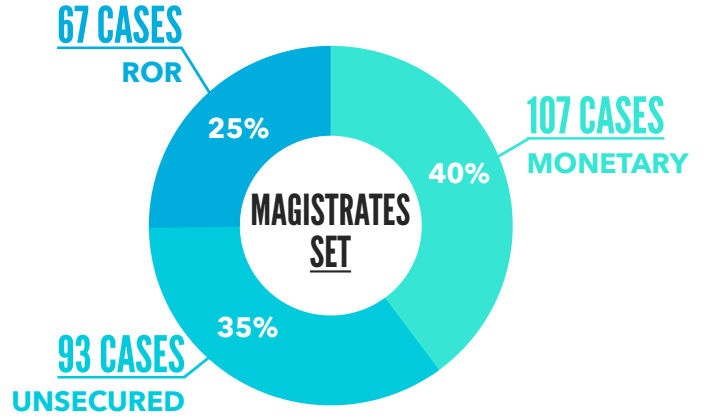
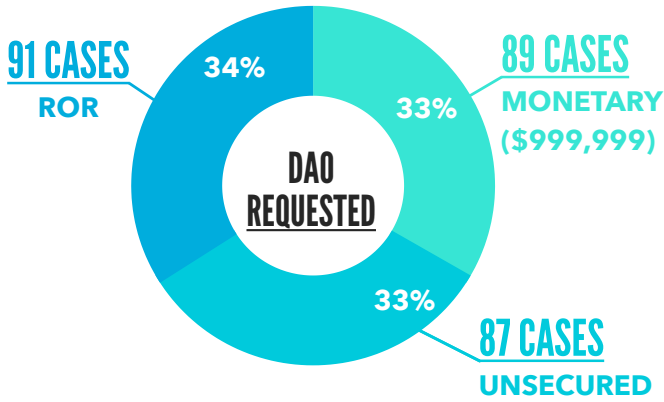
Based on a review of 451 randomly selected bail hearings, the above charges made up only 40% of the cases for which the DAO requested \$999,999. The additional 60% for which the DAO requested \$999,999 included a host of other charges outside the list above, including 17% of cases where either a misdemeanor or PWID was the lead charge.

³⁰ Philadelphia City Council Budget Hearing, Committee of the Whole, District Attorney Testimony, June 8, 2020, https://www.youtube.com/watch?v=K5hYfID2W98&feature=emb_title.

³¹ Philadelphia DAO, "District Attorney Krasner Announces DAO Review Effort to Address Growing Case Load, Protect Public From COVID-19," June 11, 2020, <https://medium.com/philadelphia-justice/district-attorney-krasner-announces-dao-review-effort-to-address-growing-case-load-protect-public-22599ea87509>.

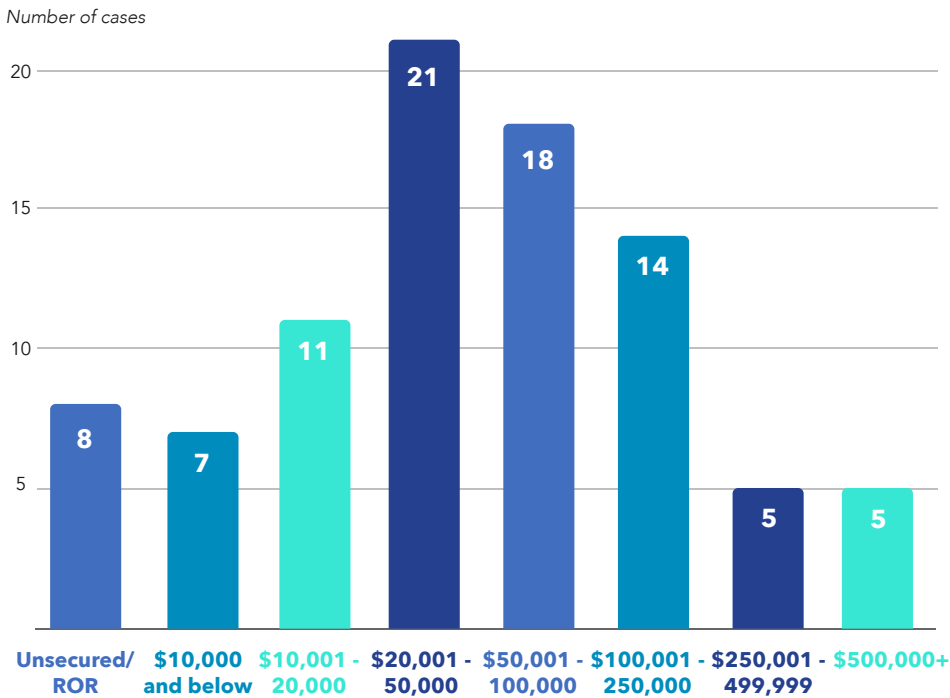
DATE RANGE: MAY 2 - MAY 21 267 PWID HEARINGS

*DRUG POSSESSION WITH INTENT TO DISTRIBUTE



OF THE 89 \$999,999 DAO BAIL REQUESTS, HOW DID MAGISTRATES RESPOND?

Over 50% of cases for which the DAO requested \$999,999 received cash bail under \$50,000



\$8.9M BAIL REQUESTED BY DAO

VS.

\$1.1M BAIL SET BY MAGISTRATE³²

DAO'S CASH BAIL REQUEST IN COMPARISON TO MAGISTRATE'S CASH BAIL ASSIGNMENT:

In 107 PWID cases where bail is set



³² Note: this is the amount it would take to free everybody. Technically, the amount assigned is ten times greater, as people assigned monetary bail have to pay 10% of the assigned bail for release.

PROFILE

JENNIFER*

BAIL REQUESTED
BY DAO: **\$999,999**
BAIL SET BY
MAGISTRATE: **\$25,000**



\$2,500 needed for release
DAO's request 40x higher than what magistrate set.

Jennifer, a youngest daughter with seven older brothers, has lived in North Philadelphia her entire life. "Growing up wasn't easy," she said, "but we worked hard to support each other and help out my mom."

Jennifer worked a series of jobs – physician assistant, cleaner, and an occasional party promoter – to provide for her family. But that all changed in 2019 when she lost her stepson, whom she helped raise, to gun violence in Philadelphia. "His death really hit me. I couldn't work; couldn't find the energy to get out of bed. The grief was real."

Months later, and after seeking therapy, Jennifer began looking for work but had trouble finding stable employment. She worked a few temporary jobs, but nothing seemed to last for long. At the time of her arrest, she was still looking for work.

At her bail hearing the District Attorney's Office requested \$999,999 bail and the magistrate set her bail at \$25,000 (\$2,500 needed for release). Unable to pay, Jennifer, who has long suffered from chronic asthma, was detained at Riverside Correctional Facility in Philadelphia. **"When I heard the lawyer [District Attorney's representative] say a million dollars, I really thought they had the wrong person. I never stepped foot in jail before."** Several days later, the Philadelphia Bail Fund paid Jennifer's bail so she could return home with her family.

A few weeks after her release, Jennifer found what she had wanted for the past year: work. She now works as an in-home health aide, helping an elderly, disabled man in her neighborhood. "It's the perfect job," she said, "I've always loved helping people."

IN HER WORDS

What are three words you would use to describe yourself?

"Outgoing, Social, Hardworking"

What's one thing people wouldn't expect to know about you?

"I still like watching wrestling. I know it's fake, but I grew up watching it with all my brothers."

What are some things you like to do for fun?

"Spending time with family and friends, going to the gym, and dancing."

Any plans for the future?

"To keep working and hopefully buy a house...that way I can have my nieces and nephews over."

If there's one thing you could tell the District Attorney and Magistrate, what would it be?

"I'm many things but a monster is not one of them."

*Note: In order to protect the privacy of the individuals profiled, pseudonyms are used and the charges each person is facing are not identified. Moreover, we believe the focus of these stories should be on the person, rather than the charges that are lodged against them.

PROFILE

LEONARD*

BAIL REQUESTED
BY DAO: **\$999,999**
BAIL SET BY
MAGISTRATE: **\$5,000**



\$500 needed for release
DAO's request 200x higher than what magistrate set.

Leonard is a father and a new grandfather. In the weeks before his arrest, his eldest son gave birth to a baby boy, whom he named Leonard. "Seeing my grandchild come into this world was a real happy moment."

For years, Leonard worked at a local restaurant until he was laid off weeks into the coronavirus pandemic. "Like with the snap of a finger, my life changed for the worse." He soon was living on unemployment, with occasional support from his sons and friends.

At his bail hearing, the District Attorney's Office requested \$999,999 bail and the magistrate set bail at \$5,000

(\$500 needed for release). Leonard was not able to pay \$500 at the time of his hearing and was detained at Curran Fromhold Correctional Facility for several days until the Philadelphia Bail Fund paid his bail. **"I was only there for a few days, but it was hell, especially for someone my age. I'm not sure I would have lasted too long in there."**

Since being released, Leonard is looking forward to fighting his case, but most importantly, to spending more time with his new grandson.

IN HIS WORDS

What are three words you would use to describe yourself?

"Funny, Caring, Integrity"

What's one thing people wouldn't expect to know about you?

""Back in the day, I used to DJ. Still got my turntables now!"

What are some things you like to do for fun?

"Fun? Watch football, I guess."

Any plans for the future?

"Spend as much time with my family as possible."

If there's one thing you could tell the District Attorney and Magistrate, what would it be?

"Just treat me like you would treat your people – your family and friends"

*Note: In order to protect the privacy of the individuals profiled, pseudonyms are used and the charges each person is facing are not identified. Moreover, we believe the focus of these stories should be on the person, rather than the charges that are lodged against them.

MYTHS AND FAQs

ISN'T IT UP TO THE STATE LEGISLATURE TO END CASH BAIL, AND ISN'T DISTRICT ATTORNEY KRASNER DOING ALL HE CAN?

As this and our last report³³ show, there's a huge amount that DA Krasner can do on his own, under current law, to drastically reduce the frequency at which cash bail is issued in Philadelphia. Instead of being consistently more carceral than the bail magistrates, he could be requesting pretrial freedom for the vast majority of accused people. The bail magistrates very infrequently assign cash bail to somebody the District Attorney's Office agrees to release without bail.

Furthermore, state bail law already provides significant protection for people accused of crimes; the problem is that magistrates break the law every day.³⁴ Under the Pennsylvania Rules of Criminal Procedure, monetary bail is supposed to be a last resort, assigned only after considering every alternative. The rules state that "[n]o condition of release, whether nonmonetary or monetary, should ever be imposed for the sole purpose of ensuring that a defendant remains incarcerated until trial."³⁵ By routinely requesting million-dollar bails, DA Krasner throws state law to the wind and encourages the bail magistrates to do the same.

PHILADELPHIA POLICE CHANGED THEIR ARREST POLICY DURING THE PANDEMIC AND TEMPORARILY STOPPED ARRESTING FOR LOW-LEVEL CRIMES. DOESN'T THIS SKEW THE DATA BECAUSE ONLY PEOPLE FACING "MORE SERIOUS CHARGES" WERE ARRESTED AND HAD BAIL HEARINGS?

The PPD announced that they would resume low-level arrests on May 1.³⁶ As detailed above, DAO requests remained fairly consistent before and after this change: of the 245 randomized hearings we examined since May 1, the DAO requested \$999,999 bail in 123 cases (over 50 percent). Prior to May 1, the rate was 55 percent. Neither of these numbers is acceptable.

SHOULDN'T THE DISTRICT ATTORNEY REQUEST BAIL FOR PEOPLE WITH "MORE SERIOUS CHARGES"?

First, the charges presented at bail hearings are only allegations. The presumption of innocence means nothing if it doesn't protect you from incarceration. And our work has shown that when people are free, their cases are frequently dropped; 71% of our clients have the charges against them dismissed.³⁷

Second, incarceration generally, and pretrial detention specifically, increase recidivism.³⁸ If community safety is your genuine concern, you should explore alternative ways of preventing the social ills that create crime; opportunity and education decrease harm, while cages only aggravate it.

Third, DA Krasner's current policy attempts to skirt due process protections, like a full detention hearing, that are required as a prerequisite to incarcerating people pretrial in places like Washington, D.C. and New Jersey. That process is essential because it forces the prosecutor to articulate a compelling reason why somebody must be held, instead of assigning an unaffordable bail during a two-minute hearing.

Finally, prosecutors frequently overcharge because more serious charges give them more leverage in plea negotiations, further distorting the reality underlying criminal cases.

³³ Philadelphia Bail Fund, Observations of 125 Recent Bail Requests (May 8, 2019), <https://www.phillybailfund.org/da-report>.

³⁴ ACLU of Pennsylvania, "A Letter to FJD Regarding Bail," September 11, 2018, https://aclupa.org/sites/default/files/field_documents/a_letter_to_fjd_regarding_bail_9.11.2018_0.pdf.

³⁵ 234 Pa. Code Rule 524 (comment).

³⁶ Ellie Rushing and Robert Moran, "Philly police resume pre-coronavirus arrest procedures for some non-violent crimes," Philadelphia Inquirer (May 1, 2020), <https://www.inquirer.com/news/philadelphia/coronavirus-philadelphia-police-arrests-theft-burglary-covid-19-20200501.html>.

³⁷ Philadelphia Bail Fund, A Window Into a Future Without Cash Bail: A Snapshot Report on Resolved Cases of the Philadelphia Bail Fund, November 2019, <https://www.phillybailfund.org/case-outcomes>.

³⁸ Paul Heaton, Sandra G. Mayson, and Megan T. Stevenson, The Downstream Consequences of Misdemeanor Pretrial Detention, 69 Stanford L. Rev. 711 (2016). Available at SSRN: <https://ssrn.com/abstract=2809840>.

THE JAIL POPULATION WENT DOWN CONSIDERABLY DURING COVID - SHOULD WE ATTRIBUTE THAT TO DAO'S NEW BAIL POLICY?

No. While we lack the data to comment on whether the District Attorney's Office's other initiatives have contributed to decarceration - [we have requested this data from the District Attorney's office to no avail](#) - it is entirely clear that the bail policy has not. If DA Krasner had his way, according to our estimates, 53% of new arrestees would be incarcerated on \$999,999 bail. Luckily, since the magistrates have not blindly gone along with DA Krasner's requests, many of those people have either been released without payment, have been able to pay their own bails, or have been bailed out by us or our sister fund, the [Philadelphia Community Bail Fund](#). Together, we have freed over 500 people since the pandemic's onset in Philadelphia in March 2020.

WHAT CAN DISTRICT ATTORNEY KRASNER AND THE BAIL MAGISTRATES DO NOW?

DA Krasner has the power to request release for every newly accused person, and the bail magistrates have the power to grant that request. Rather than request \$999,999 bail in a majority of cases reviewed, the District Attorney's Office could truly follow the example of Washington, D.C., and New Jersey and request some form of release for the overwhelming majority of arrestees. DA Krasner can also support bail reduction motions for people currently incarcerated on bail; though judges do not always grant release even when the District Attorney's Office agrees,³⁹ its support carries significant weight. This requires no statewide legislation whatsoever. Entirely local change is possible. Such change is not radical - it's what DA Krasner campaigned on, and what he was elected to do.

³⁹ Chris Palmer and Jeremy Roebuck, "A Philly judge has denied every inmate's bid to get out of jail amid the coronavirus. Defense lawyers are trying to cut her out of the process," Philadelphia Inquirer (April 14, 2020), <https://www.inquirer.com/news/coronavirus-philly-jails-judge-anne-marie-coyle-defender-association-keir-bradford-grey-20200414.html>.

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The Philadelphia Bail Fund is a revolving fund that posts bail for people who cannot afford bail. Our goal is to keep families and communities together and to abolish wealth-based detention and pretrial punishment in Philadelphia. Since January 2018, the Philadelphia Bail Fund has helped free 435 people from pre-trial detention in Philadelphia, including 275 people since the start of the coronavirus pandemic.