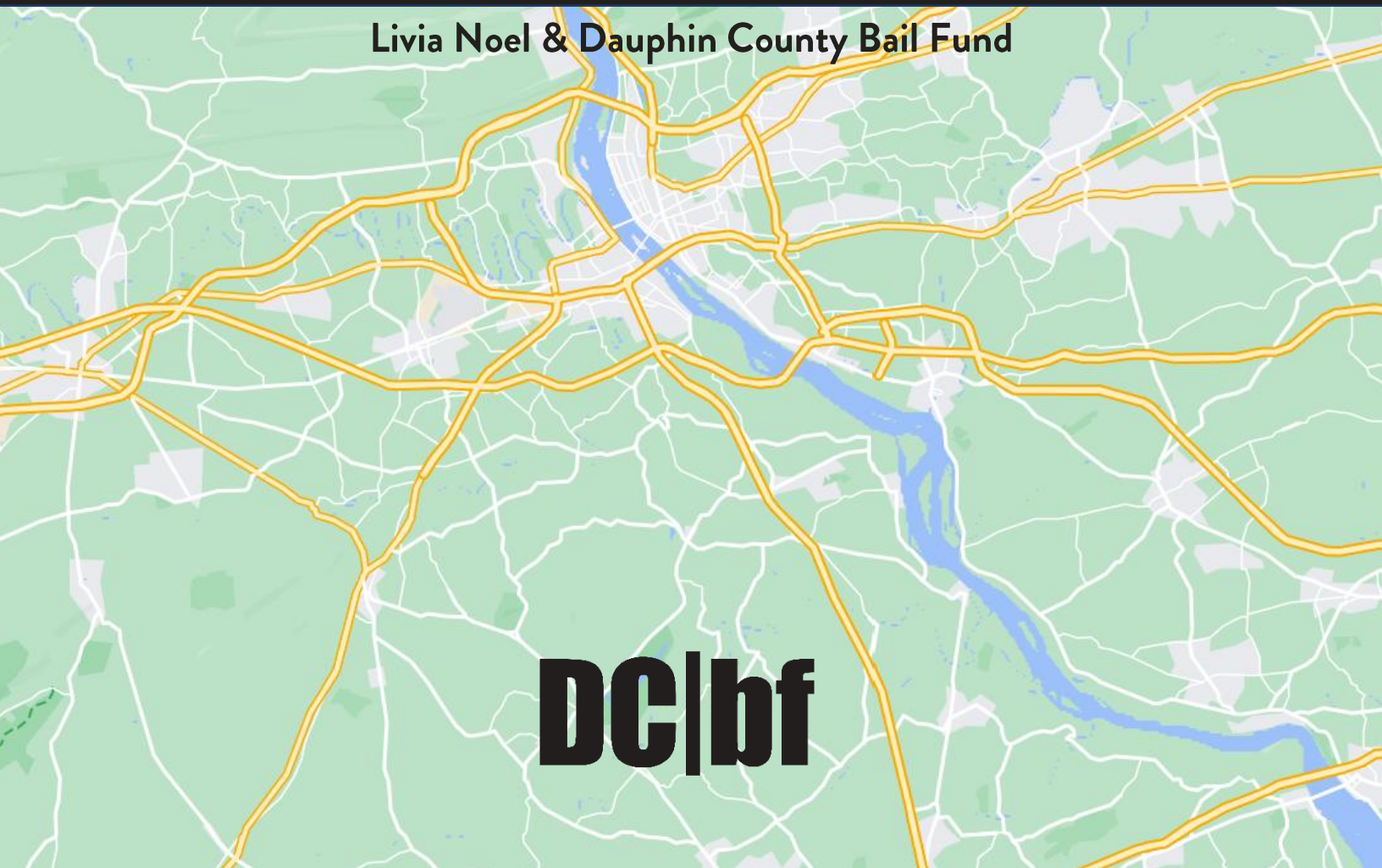


CASH BAIL IN DAUPHIN COUNTY:

a six-month snapshot



Livia Noel & Dauphin County Bail Fund

DC|bf

INTRODUCTION

An estimated 67% of people in city and county jails around the country are there because they cannot meet the cash bail imposed upon them pretrial. This is over 400,000 people nationwide.¹

Pretrial detention has a detrimental impact on individuals, families, and communities. Being incarcerated pretrial can cause a person to lose their job, custody of their children, their housing, and hinders a person's ability to prepare for their future court date, leaving them unprepared for their defense.² A 2017 study published in the Stanford Law Review found that pretrial detention “causally increases the likelihood of conviction, the likelihood of receiving a carceral sentence, the length of a carceral sentence, and the likelihood of future arrest for new crimes.”³

All individuals being detained pretrial in Dauphin County are held in the Dauphin County Prison. As of June 2022, the prison population was 922.⁴ The Dauphin County prison refuses to release pretrial incarceration data themselves and have previously stated that “data is not available in neat categories that offer a clear reflection of the breakdown.”⁵ This makes it very difficult to learn more about the rates of pretrial incarceration and how bail affects different groups of people because the information is not easily accessible. Despite this, learning about bail and incarceration in Dauphin County is incredibly important. Aside from the aforementioned consequences of incarceration that someone may face after they are released, there are many dangers associated with imprisonment itself. Like In the Dauphin County Prison specifically, there were 77 incarcerated people on mental health or suicide watch as of June.⁶

Additionally, there is an ongoing investigation of the death of an incarcerated person at DCP in 2021. Prison staff pepper sprayed him, put a spit hood over his head, and forced him into a restraint chair, leading him to fall into a coma and later die.⁷ The Prison is denying responsibility for the individual's death, stating only that he was hospitalized following a “medical event.”⁸ This incident is not isolated and was actually the fourth incarcerated person to die at DCP that year as of only July 29.^{9, 10}

Because Dauphin County doesn't keep track of this data that is of vital public importance, Dauphin County Bail Fund has conducted a study on individuals held at Dauphin County Prison due to unpaid cash bail. We compiled information from all Dauphin County criminal docket sheets for the first half of 2022 to create a dataset. From this data, we found that there was a vast racial disparity in who was being assessed unpayable bail amounts most often. Additionally, we encountered specific judges who assigned unpayable bail at a higher rate compared to the others. All of this is especially critical as public information because Magisterial District Judges, who decide bail, are elected officials, meaning that the public has direct decision-making power over who is able to serve in this role.

The use of cash bail undermines the presumption of innocence and denies people their freedom despite the fact that they haven't even been convicted of a crime.

EXECUTIVE SUMMARY

1

In total, there were 913 cases of individuals confined in the Dauphin County Prison because of unpaid cash bail in the first half of 2022 alone

2

Of those cases, five Magisterial District Judges (Michael J. Smith, Paul T. Zozos, David O'Leary, Hanif L. Johnson Sr., and Marian Urrutia) were responsible for nearly 60%

3

Cash bail is disproportionately assigned to Black individuals in Dauphin County. Although Black people comprise only 19.2% of Dauphin County's population, they account for 53% of cases of people remanded to Dauphin County Prison in the first six months of 2022 simply because they could not make bail.

4

Pennsylvania's legal code states that MDJs must take a person's financial ability into account when assigning bail. Magisterial District Judges are not following the rules when assigning bail.

5

Magisterial District Judges are elected officials who can be held accountable for their policies and choices.

Overview

What is Cash Bail?

Cash bail is assigned to some defendants that have been deemed eligible for release from jail pretrial. It is meant to be assessed only when less restrictive measures have been deemed inadequate. It is not meant to be used as a punishment, or solely to keep an individual incarcerated. Cash bail is a payment imposed by a judge prior to a defendant's trial which allows the defendant to essentially buy their freedom as they await their trial. Cash bail isn't judges' only option when trying to ensure that people return for their court date. They could opt to impose very small cash amounts, such as \$1, making it a nominal bail. Another option is unsecured bail, in which a monetary penalty is only imposed if the conditions of bail are violated, such as the defendant failing to attend their court date. Or, rather than imposing a monetary requirement at all, they can release people on their own recognizance (ROR), where a defendant promises to attend their court date.

If assigned cash bail, the defendant has the choice of either posting the bail amount or being confined in prison while they await trial. In theory, cash bail is a way to ensure that people who are awaiting trial will return for their court dates. If the defendant shows up to court, the money will be returned to them at the end of the trial process regardless of the verdict. Bail is meant to incentivize the defendant's return to court but is not meant to create an unbearable burden or act as a punishment for the defendant. Unfortunately, in practice, this is just what bail has become.

People who do not have the money to meet cash bail often have to turn to bail bonds companies. These for-profit companies are essentially controlled by the insurance industry, whose main goal is not to help people get free but to make money. They take a fee off of someone (often 10% of the bail amount) in order to put up their bail in exchange for an assurance that the person will show up for their court date. But, unlike people who are able to pay bail out of pocket, these individuals never get their fee back. They are out whatever money they have to give the bonds company - even if their case gets dropped two minutes after bail is posted. It essentially operates as a poverty tax and disproportionately impacts Black communities and poor communities. Meanwhile, the bail bond industry makes about \$2 billion annually.¹¹

Who Assigns Bail?

Each aspect of bail – from the type to the amount – is decided during the preliminary arraignment or hearing. This is the first stop in the criminal justice system following an arrest. This is where Magisterial District Judges come into play. At this time, the MDJ has full discretion to assign bail if they choose to do so, as well as the bail amount. It is important to note that pretrial detention is meant to be a last resort, only to be used when less restrictive means are inadequate.

When assigning cash bail, MDJs are supposed to account for a person's financial status and refrain from assigning bail which the person would not reasonably be able to pay. Additionally, Judges are not allowed to assign bail amounts based on the perceived heinousness of the alleged crime. According to a new bail rule passed earlier this year, MDJs must also provide a written rationale supporting the bail that they have chosen to assign. We have found no written rationale on any docket sheet, and it seems that in order to access this information, a specific request must be made to the courts.

Who Can be an MDJ?

The role of Magisterial District Judge is an elected position, with terms lasting six years. The annual salary for an MDJ is \$98,565.¹² There are relatively few requirements to become an MDJ – candidates must be between the ages of 21 and 75, a resident of the county for at least a year, and either a Bar Association member or certified through a training course.¹³ Many MDJs do not actually have a legal background.

How Did We Conduct This Study?

Court dockets are made publicly available by the state of Pennsylvania, but the state does not do any type of data compilation on its own. This means that in order to have any understanding of how many people are held on bail, who these people are, and the amounts of bail assigned, individuals and organizations have to compile the data themselves. This is crucial information to know because it gives us a greater understanding of the ways in which cash bail affects groups of people disproportionately. In addition, this type of data can give insight into which Judges assign unmeetable bail amounts more frequently. This is especially meaningful to those who are eligible to vote because the role of MDJ is an elected position.

The data was collected from the Unified Justice System of Pennsylvania Web Portal (UJS), which is the state database for court dockets. The data includes all Dauphin County cases from January 1, 2022, to June 30, 2022, in which a judge imposed cash bail and the defendant was then confined because of an inability to pay that bail. In this dataset, the “bail amount” refers to the initial amount set by the MDJ at the preliminary hearing. Later changes in the amount of bail or bail type are not reflected in this data.

Limitations

Because we have to compile all of the data by hand, we have to assume that each docket was filed correctly and that the searches include every docket. This means that all numbers listed in this report represent “at least” how many cases actually exist of people held on bail.

Additionally, in Pennsylvania, criminal docket sheets categorize Latinx individuals as white, rather than including Latinx as its own group. There are multiple limitations because of this. Firstly, this inhibits research about the specific experiences of Latinx people in the criminal justice system. Additionally, the “practice of including Latinx people in the ‘white’ category can make the white-black gap in racial disparities appear smaller than it actually is.”¹⁴

This report does not take detainers or holds into account. If an individual is on community supervision (probation or parole) from a prior legal proceeding, or subject to immigration detention, those particular agencies can lodge a detainer meaning that even if bail were to be paid, the individual would remain incarcerated (either at Dauphin County Prison, or another facility) until those other prior issues are adjudicated. Since Dauphin County does not provide statistics on how many currently incarcerated people have which types of detainers, we are unable to delineate how many individuals may be electing not to pay cash bail due to having a detainer. Dauphin County Bail Fund has and will continue to ask for the county to provide these statistics in order to provide a more nuanced and comprehensive look at pretrial detention in Dauphin County.

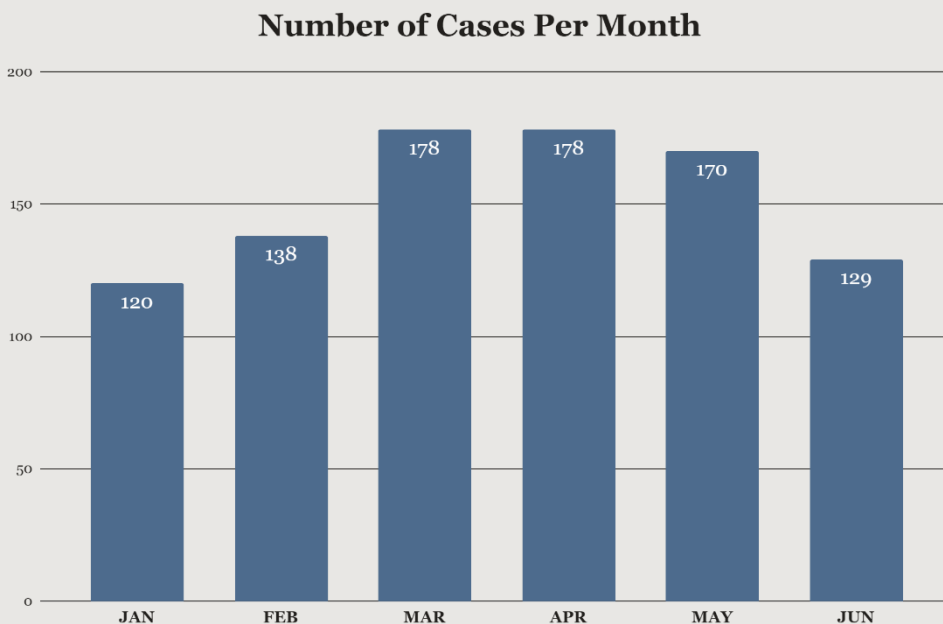
The report also cannot account for circumstances where a defendant may choose not to pay bail for other reasons. For example, time held pretrial may count towards time served. In that case, a defendant may choose not to pay their cash bail, even if they are able to, for purposes of shortening the duration of an imposed sentence.

Findings

Sheer Numbers

In total, there were **913** cases of individuals confined in the Dauphin County Prison because they were unable to post bail in the first half of 2022 alone. Those six months represent 181 days in total, meaning that **on average, just over five people per day were assigned unmeetable bail.**

The most cases of unmeetable bail occurred in March and April, which could be dependent on the number of holidays in those months and the number of days in the month compared to shorter months, like February.



913
People Imprisoned on Bail

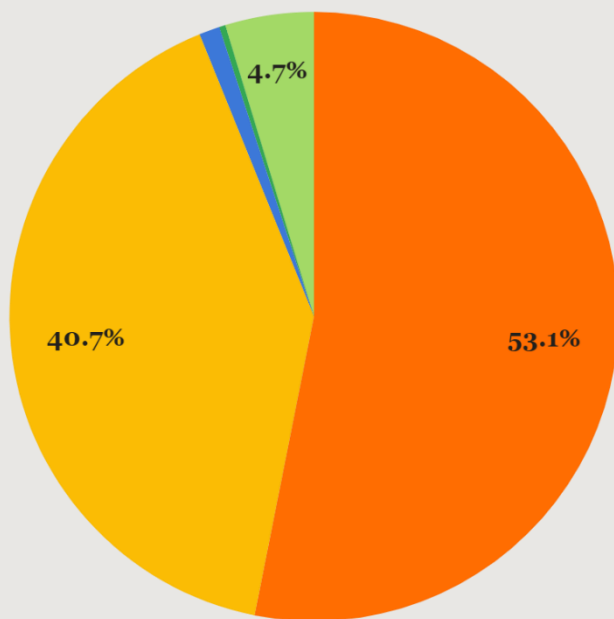
Findings

Racial Breakdown

The data shows a vast disparity in who is affected by unmeetable cash bail. Data from the first half of 2022 indicates that in Dauphin County, Black individuals are disproportionately imprisoned because of an inability to pay bail. During this time period, **53%** of those held on bail were Black, while just over **40%** were white. These numbers already show racial disparities, but those disparities become even more stark when compared to the racial makeup of Dauphin County as a whole. In Dauphin County, less than 20% of the population is Black, compared to over half of those held on bail.

Race of Those Held on Bail

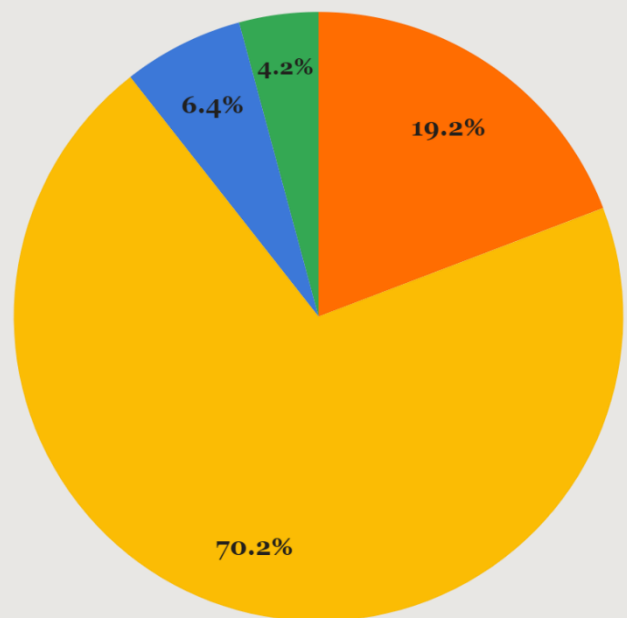
January - June 2022



● Black ● White ● Asian ● Other ● Not Stated

Racial Breakdown of Dauphin County

Based on Population Estimates from the U.S. Census Bureau



● Black ● White ● Asian ● Other

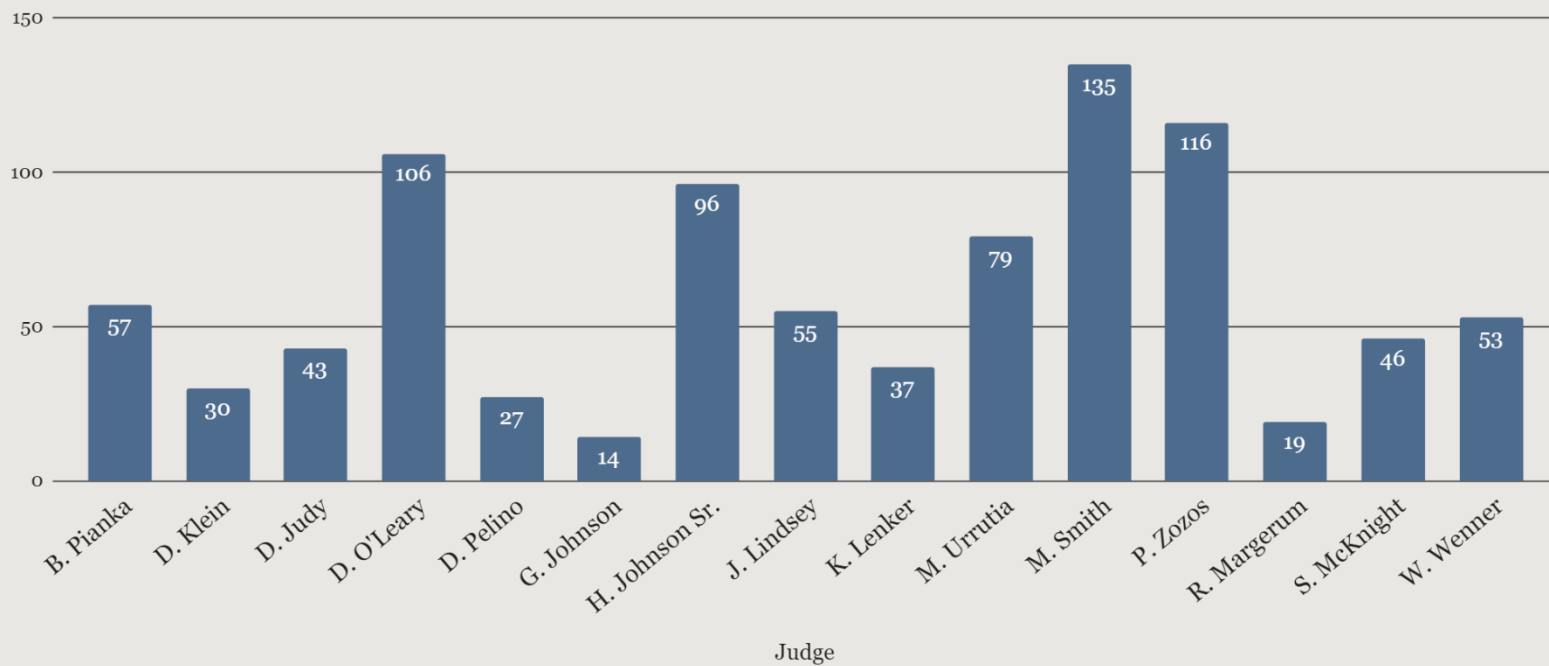
Black people in Dauphin County are imprisoned on bail at disproportionately higher rates than white people

MDJs

There are fifteen total magisterial district judges in Dauphin County; each covering a different area of the county. MDJs exercise a lot of power over people who have been arrested, as they are the first stop for many in the criminal justice system following their arrest. The graph below shows the number of times each Dauphin County MDJ assigned a bail amount that the defendant could not or did not pay in the first half of 2022. There were 913 cases, totaling **\$47,348,776** in assigned bail that was not met. Five MDJs in particular showed up in these dockets more frequently than the rest – Judges Michael J. Smith, Paul T. Zozos, David O’Leary, Hanif L. Johnson Sr., and Marian Urrutia. These five judges are responsible for nearly **60%** (58.26%; 532 out of 913) of cases where a person was unable to meet the bail imposed by an MDJ.

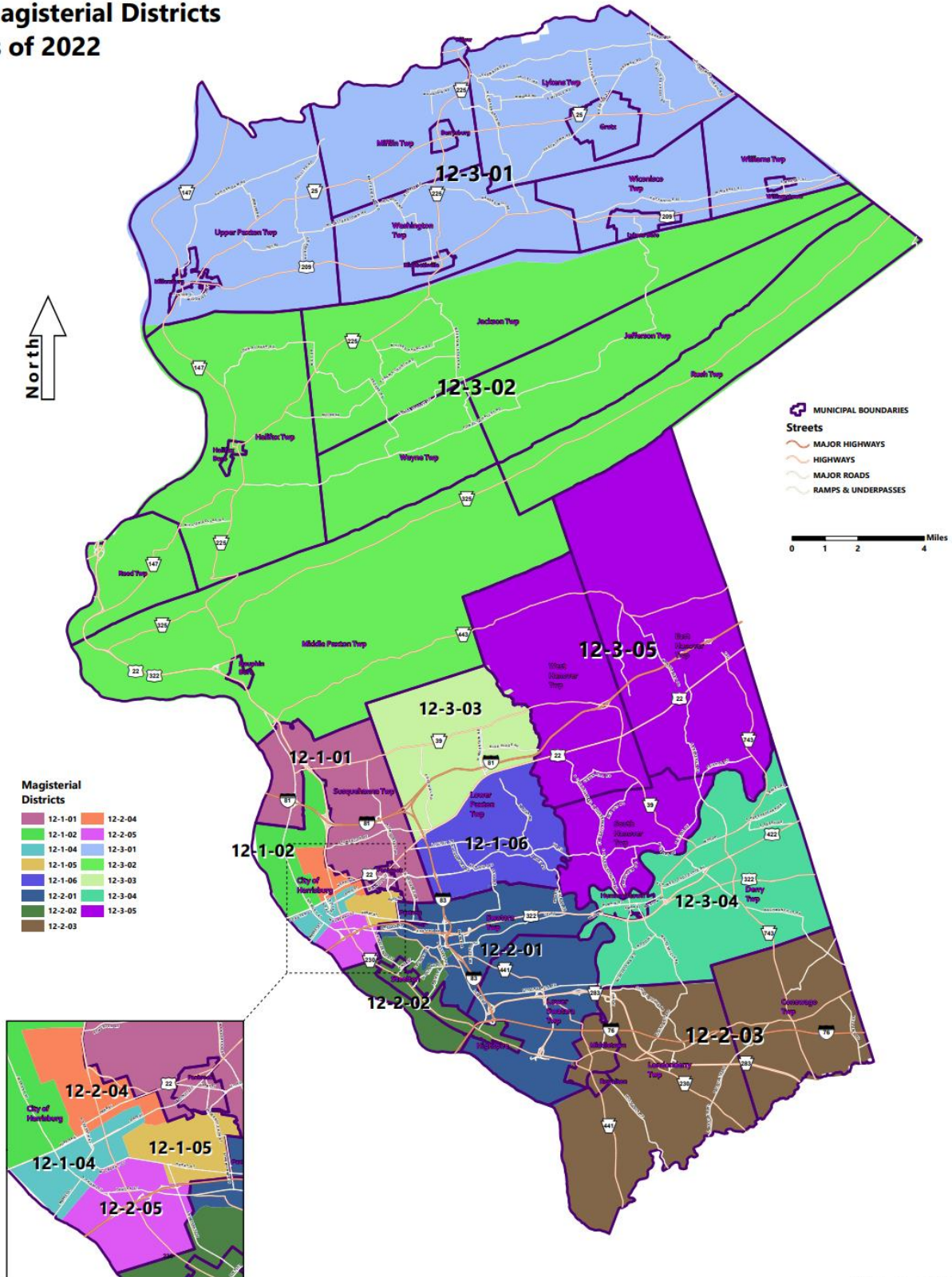
Amount Held on Bail Per Judge

January - June 2022



Dauphin County

Magisterial Districts as of 2022



Taken from https://www.dauphincounty.org/document_center/courtdepartments/MDJ/MDJMap_2022.pdf

MEET YOUR MDJs

MDJ Michael J. Smith

The most egregious offender in 2022 so far has been Judge Michael J. Smith, with **135** cases of individuals held on bail. Judge Smith represents district 12-2-01. He does not have a law degree, nor did he attend law school. Instead, his prior experience in the legal system was in law enforcement. Smith was a Swatara Township Police Officer for 27 years, where he served as a detective as well as a SWAT team leader and physical fitness coordinator. With 135 cases, Smith accounts for nearly **15%** of those imprisoned because of unpayable bail.

Smith became an MDJ through appointment in 2005, as the interim replacement for a retiring judge. He was elected to a full six-year term in November of that year and has been serving ever since. Smith is a Republican, but he cross-files in the Primaries, enabling him to run under both the Republican and Democratic tickets. As a result, Smith ran unopposed.^{15, 16}

MDJ Paul T. Zozos

Next is Judge Paul T. Zozos, with **116** cases. He represents district 12-2-05 in Harrisburg. Zozos followed in the footsteps of his father, Judge George Zozos, becoming a Dauphin County Magisterial District Judge in 2015. He won the Democratic primary and was subsequently elected, running unopposed in the general election that year.¹⁷

MDJ David O’Leary

Judge David O’Leary comes in at a close third, with **106** cases. He also represents Harrisburg, covering district 12-1-04. O’Leary has been serving Dauphin County since his appointment in 2016, and he won as the incumbent in the Democratic primary the next year. Similar to Zozos and Smith, O’Leary ran unopposed in the general election. His current term ends in 2023, when he will be up for reelection.¹⁸

SMITH

District

12-2-01

Town

Swatara

ZOZOS

District

12-2-05

Town

Harrisburg

O’LEARY

District

12-1-04

Town

Harrisburg

MDJs

MDJ Hanif L. Johnson, Sr.

Fourth is Judge Hanif L. Johnson, Sr., with **96** cases. Johnson represents district 12-1-05, also in Harrisburg. Johnson has an interesting background with the criminal justice system, having spent time in prison multiple times himself for minor offenses. He reportedly turned his life around after becoming involved with track and field in high school, and later pursuing the sport at Penn State, where he earned a B.S. in Economics.¹⁹ In an interview, Johnson explained that he hoped to be an ally to his community through his position as an MDJ, rather than an outsider working against those in Harrisburg. He stated: “you have single moms that can’t pay a parking ticket; I have the control to make life easier for her, rather than someone from out of town who don’t understand that \$100 ticket might be too much for her and she ends up in jail over that ticket.”²⁰ As one of the top 5 judges in the county with the most instances of individuals jailed because they were unable to make bail, it’s interesting that this would be his public platform.

JOHNSON

District

12-1-05

Town

Harrisburg

MDJ Marian Urrutia

Following Johnson is MDJ Marian Urrutia, with **79** cases. She represents district 12-1-01. There is almost no information about Urrutia online. She was new to the court as of 2021, so it will be interesting to see how she progresses in the position and how often she assigns bail in the future.

URRUTIA

District

12-1-01

Town

Susquehanna

MDJs rely on your vote – here is when each of these judges is up for reelection:

2023

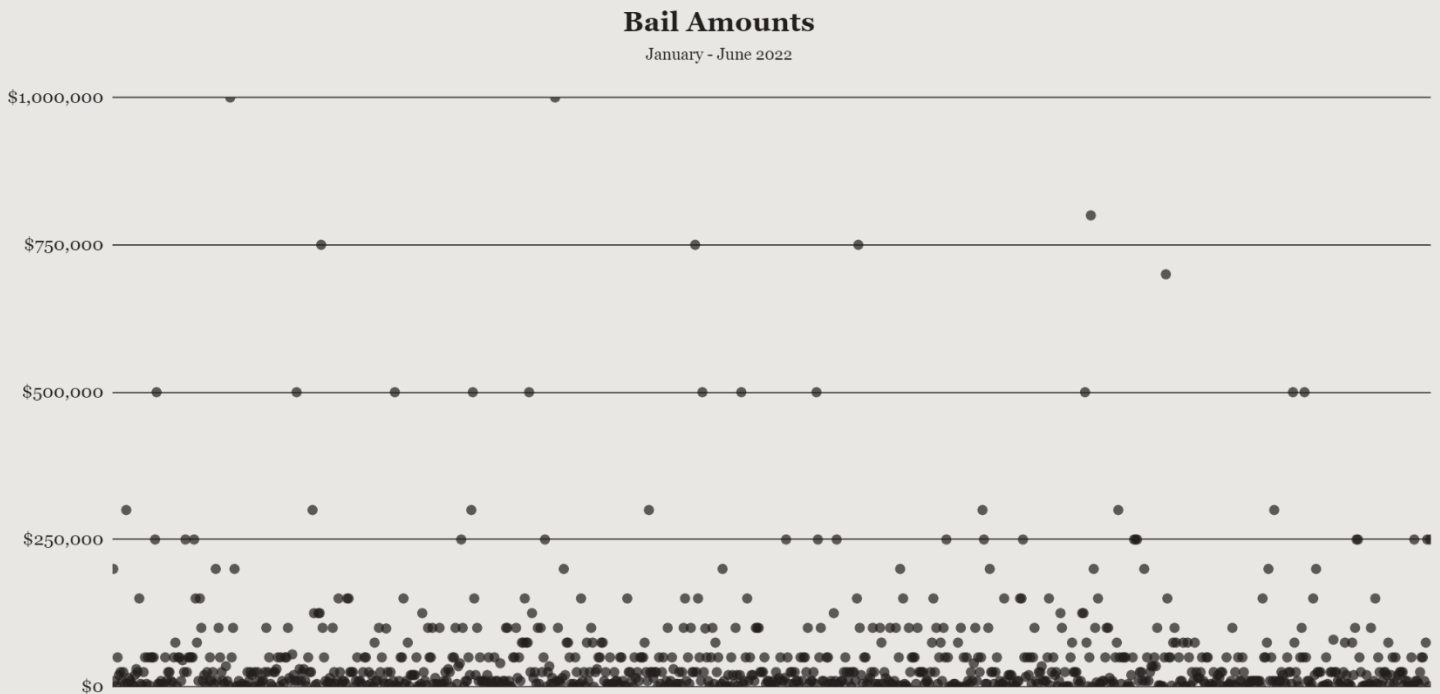
David O’Leary; Michael J. Smith; Hanif L. Johnson, Sr.

2028

Paul T. Zozos; Marian Urrutia

How Much Bail Are MDJs Assigning?

Here are the amounts of cash bail that have been assigned across this time period:



Overall, the median bail amount across this time period was \$25,000. This is important for a few reasons. First, the per capita income in Dauphin County is just over \$35,000.²¹ This means that the median bail amount assigned is almost as much as many in Dauphin County would make in an entire year. It's unreasonable to expect an individual to hand over this amount of money, even to secure their freedom. Second, studies show that over half of Americans do not have enough in savings to afford even a \$1,000 emergency expense, let alone \$25,000 bail.²²

How is this Legal?

It's not. Legally, MDJs should not be assigning unpayable levels of cash bail. The Pennsylvania legal code states that when assigning bail, "the amount of the monetary condition shall be reasonable," and that the judge must assess the "financial ability of the defendant" when determining the amount.²³ According to this law, bail is not meant to lead to imprisonment. Instead, it should be used as a means to incentivize the defendant to return for their court dates. By assigning unpayable amounts of bail, MDJs are abusing their position of power to incarcerate individuals before they've even been given a guilty verdict.

Similarly, in their 2020 study of Pittsburgh policing and bail practices, the Abolitionist Law Center found that "judicial inquiry concerning a defendant's ability to pay bail is rarely undertaken, even though it is a constitutional requirement."²⁴

Conclusions

What Does All of This Tell Us?

The data shows that over these six months, Black defendants were targeted disproportionately by unpayable bail. This is in line with a larger trend of Black and minority individuals being faced with incarceration because of bail at a far higher rate than white people.²⁵ Additionally, while Dauphin County is about 70% white, Harrisburg is a Black-majority city. Many of the most egregious MDJs are based in Harrisburg city limits.

What Questions Remain?

Additionally, this study did not look at the total number of cases dealt with by each MDJ, so it is currently impossible to know if each judge handles a similar number of cases, or whether some deal with a far heavier case load relative to the rest. This could possibly affect which judges assign unreasonable bail most often, as a percentage of the total cases they handle rather than just the raw numbers. What is clear is that MDJs do not have exactly equal caseloads.²⁶

Dauphin County's Courts Departments does keep worksheets on individual MDJ caseloads, though the latest data does not include the time period covered in this study.²⁷

Another contributing variable in the racial disparity could be arrest rates. The data does not include information about who is being arrested overall, so it is possible that a large part of the racial disparity could originate in policing and who police are choosing to arrest - and the district attorneys who uphold those arrests and charges.

Again, a lot of this information is unavailable because the Administrative Office of Pennsylvania Courts, local police departments, and district attorneys choose not to compile this data themselves, leaving the burden of research on individuals and organizations. Leaving this court information intentionally obtuse is very convenient for a court system which aims to maintain the status quo.

Bibliography

¹“Pretrial Detention: Exploring cost and outcome of detaining people before trial or deportation (ie. instead of bail or other alternatives),” Prison Policy Initiative, last modified November 8, 2022, https://www.prisonpolicy.org/research/pretrial_detention/#:~:text=You%20can%20also%20see%20a,being%20held%20pretrial%3A%2067%25%20%2B

²Paul Heaton, Sandra Mayson & Megan Stevenson, “The Downstream Consequences of Misdemeanor Pretrial Detention,” *Stanford Law Review* 69(3) (2017), p. 713.

³Paul Heaton, Sandra Mayson & Megan Stevenson, “The Downstream Consequences of Misdemeanor Pretrial Detention,” p. 714.

⁴Dauphin County Prison Board of Prison Inspectors Meeting Minutes. June 22, 2022, p. 4. Provided online at <https://www.dauphincounty.org/June%20Minutes%20for%20Website.pdf>.

⁵Dauphin County Prison Board of Prison Inspectors Meeting Minutes. June 22, 2022, p. 8.

⁶Dauphin County Prison Board of Prison Inspectors Meeting Minutes. June 22, 2022, p. 3.

⁷Joshua Vaughn, “Dauphin County refuses to release records on fights, force and medical issues in jail,” *PennLive* [online], September 14, 2022. <https://www.pennlive.com/news/2022/09/dauphin-county-refuses-to-release-records-on-fights-force-and-medical-issues-in-jail.html>

⁸“Review Ongoing of Dauphin County Prison Inmate Who Died at Hospital after Medical Event,” Dauphin County Pennsylvania [online], undated [2021], https://www.dauphincounty.org/news_detail_T14_R498.php

⁹“Review Ongoing of Dauphin County Prison Inmate Who Died at Hospital after Medical Event.”

¹⁰“Review Ongoing of Dauphin County Prison Inmate Who Died at Hospital after Medical Event.”

¹¹Color of Change and the American Civil Liberties Union’s Campaign for Smart Justice, *Selling Off Our Freedom: How Insurance Corporations Have Taken Over Our Bail System*, report, May 2017. Reproduced online at: <https://www.aclu.org/report/selling-our-freedom-how-insurance-corporations-have-taken-over-our-bail-system#:~:text=Our%20Bail%20System-Selling%20Off%20Our%20Freedom%3A%20How%20Insurance%20Corporations%20Have%20Taken%20Over,incarceration%20and%20perpetuates%20racial%20inequalities>.

¹²Judicial salaries effective January 1, 2022, 204 Pa. Code § 211.2 (2022).

¹³“Methods of Judicial Selection: Pennsylvania,” American Judicature Society [online]: https://web.archive.org/web/20141003153124/http://www.judicialselection.us/judicial_selection/methods/limited_jurisdiction_courts.cfm?state=PA

- ¹⁴American Civil Liberties Union of Pennsylvania, *Broken Rules: How Pennsylvania Courts Use Cash Bail to Incarcerate People Before Trial*, report, December 2021, p. 17. Reproduced online: https://www.aclupa.org/sites/default/files/field_documents/broken_rules_statewide_bail_report.pdf.
- ¹⁵“Biography: Michael J. Smith,” Dauphin County Pennsylvania [online], https://www.dauphincounty.org/government/court_departments/biography.php
- ¹⁶Barbara Miller, “Paxtang-area District Judge Michael J. Smith seeks re-election,” *PennLive* [online], January 18, 2011. https://www.pennlive.com/midstate/2011/01/district_judge_michael_j_smith.html
- ¹⁷“Paul Zozos,” Ballotpedia [online], https://ballotpedia.org/Paul_Zozos
- ¹⁸“David O’Leary,” Ballotpedia [online], https://ballotpedia.org/David_O%27Leary
- ¹⁹“Hanif L. Johnson (1990-),” Black Past, August 11, 2020, <https://www.blackpast.org/african-american-history/people-african-american-history/hanif-l-johnson-1990/>
- ²⁰Philip Lewis, “At 27, Hanif Johnson Is The Youngest District Judge In Pennsylvania,” *Huffpost* [online], January 26, 2018, https://www.huffpost.com/entry/hanif-johnson-youngest-district-judge_n_5a6a6748e4b06e2532661af6
- ²¹United States Census Bureau [online], “QuickFacts Dauphin County, Pennsylvania,” <https://www.census.gov/quickfacts/fact/table/dauphincountypennsylvania/INC910220#INC910220>
- ²²Shirin Ali, “Survey finds more than half of Americans can’t afford a \$1,000 emergency,” *The Hill* [online], January 19, 2022, <https://thehill.com/changing-america/respect/poverty/590453-survey-finds-over-half-of-americans-cant-afford-a-1000/>
- ²³Monetary Condition of Release on Bail, 234 Pa. Code § 528 (2012).
- ²⁴Abolitionist Law Center, “ALC Court Watch Releases First Court Watch Docket Report,” press release [online], December 1, 2020, <https://abolitionistlawcenter.org/2020/12/01/alc-court-watch-releases-first-court-watch-docket-report/>
- ²⁵ACLU of Pennsylvania, “Broken Rules: How Pennsylvania Courts Use Cash Bail to Incarcerate People Before Trial,” p. 3.
- ²⁶Christine Vendel, “Statewide review of Pa. district judges asks to cut 12 offices, could save taxpayers \$5 million,” *PennLive* [online], February 23, 2022. <https://www.pennlive.com/news/2022/02/statewide-review-of-pa-district-judges-asks-to-cut-12-offices-could-save-taxpayers-5-million.html>
- ²⁷“MDJ Reestablishment,” summary worksheets, Dauphin County Pennsylvania [online], https://www.dauphincounty.org/government/court_departments/mdj_reestablishment.php