

**DC|bf**

**Cash Bail in Dauphin County**

**2023**

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Photo Credit: Maya Coover

# INTRODUCTION

Dauphin County Prison holds all inmates and jailed pretrial defendants for the county, with a population primarily made up of individuals who are incarcerated because of an inability to pay bail and individuals serving jail sentences of a year or less.

Dauphin County Prison continues to pose a danger to our community. The jail does not have air conditioning, and inmates and defendants awaiting trial are subject to indoor temperatures in the mid 80s during the increasingly hot Pennsylvania summers.<sup>1</sup> To make things worse, lockdowns occur regularly due to a lack of staff. According to a Dauphin County spokesperson, DCP experienced 16 lockdowns in July 2023 due to “staffing shortages.”<sup>2</sup> During these lockdowns, inmates are confined to their cells for 23 hours a day without access to windows or fresh air.<sup>3</sup>

DCP conditions even prove fatal at times. A Reuter's investigation found that, between 2009 and 2019, 18 inmate deaths occurred at DCP.<sup>4</sup> Recently, local investigative reporting has shown that the real number of deaths is higher and that for years officials have “hidden” deaths at the prison.<sup>5</sup> Despite this exposure and mounting public pressure, our community members continue to die while awaiting trial in DCP. In 2022, 45-year-old Jamal K. Crummel passed away in his jail cell at DCP. He was awaiting trial for aggravated assault, and had been jailed at DCP because he could not pay the \$150,000 bail that had been imposed on him.<sup>6</sup> More recently, Robert Enck, who had been in the prison for more than eight months, was found dead in his prison cell in May 2023.<sup>7</sup> The deaths of Mr. Enck and Mr. Crummel represent an ongoing and devastating reality at DCP: the number of people who die during or immediately following incarceration at DCP has increased substantially since 2019.

Cash bail is a system which, ostensibly, incentivizes trial attendance from criminal defendants. In reality, the system of cash bail exacerbates existing racial and socioeconomic inequalities, coerces guilty pleas from defendants who cannot afford bail, and confines individuals in jail despite the fact that they have not been convicted of a crime. 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, and their housing, and it hinders a person's ability to prepare for their future court date, leaving them unprepared for their defense.<sup>8</sup> What is often lost in discussions about bail is that it is meant to be a mechanism for release. It is not meant as a measure of dangerousness of the person being assigned bail or to prevent the pretrial release of any individual.

**At its core, cash bail violates the presumption of innocence that individuals are supposedly guaranteed.**

These are some of the many reasons that Dauphin County Bail Fund is committed to working towards ending the business of cash bail and pretrial detention in our community. A crucial step in moving towards a bail-free future in Dauphin County is having a comprehensive understanding of how bail is actually affecting our community — information which can then be used to fight against this oppressive and exploitative system. Our 2023 report includes a compilation of six months of bail data for the first half of the year. This report will include comparisons to our 2022 data as well as a deeper dive into 2023 data, focusing on the racial and spatial dimensions of cash bail in Dauphin County.

# EXECUTIVE SUMMARY

# 1

In total, there were **974** cases of individuals confined in Dauphin County Prison because of unpaid cash bail in the first half of 2023. Collectively, their bail totaled **\$41,469,083**.

# 2

**In the first half of 2023, 27%** of criminal court cases resulted in our community members being held at Dauphin County Prison simply because they could not pay cash bail.

# 3

There is a persistent **racial disparity** in how Dauphin County MDJs assign bail, with Black residents of Dauphin County disproportionately being hit with cash bail they are unable to post.

# 4

Four MDJs (Barbara W. Pianka; Hanif L. Johnson, Sr.; District 12-1-04\*; and Paul T. Zozos) sent defendants to Dauphin County Prison because of an inability to pay bail in **over 30%** of their criminal cases.

# 5

All of the judges with the highest proportion of cases that include pretrial detention represent Harrisburg city, highlighting a **spatial disparity** in who is being incarcerated because of inability to pay cash bail.

# HOW DID WE CONDUCT THIS STUDY?

## METHODOLOGY

Court dockets are made publicly available by the Unified Judicial System of Pennsylvania, but across Pennsylvania, county governments are not compiling or sharing pretrial data in uniform ways. While the state could track this data and make it easily publicly available across the board, this is not currently happening. It is for this reason that organizations like the ACLU of Pennsylvania and the Dauphin County Bail Fund have been looking through thousands of criminal docket sheets to gauge how many people are held on cash bail, who these people are, and the amounts of bail assigned. This is crucial information to know because it gives us a greater understanding of how cash bail affects groups of people disproportionately. In addition, this type of data can give insight into which judges forego less restrictive options and assign unmeetable bail amounts more frequently. This information is especially meaningful to those who are eligible to vote. The role of MDJ is an elected position. Unlike legislators whose voting records are easily accessible, MDJs' pretrial detention practices are much more opaque and can only be accessed through time intensive and/or expensive means.

The data from this report was collected from the Unified Justice System of Pennsylvania Web Portal (UJS), which is the state database for court dockets. We looked at every criminal court docket sheet that appeared on UJS for Dauphin County between January 1, 2023, and June 30, 2023. While doing this, we kept track of the total number of criminal cases which came before each MDJ. To capture data on cash bail, we looked at these sheets to see who was confined to DCP because they were "unable to post 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

MDJ David O'Leary previously held District 12-1-04, but retired during the timeframe covered by this report. In his absence, cases assigned to his office were being covered by Common Pleas Judge John F. Cherry, and possibly other judges as well. All of the docket sheets would then be updated to reflect the new MDJ responsible for each case, making it impossible to know which Judge actually oversaw any given case. Thus, we will attribute responsibility for these cases to "District 12-1-04" in the report, rather than referring to a specific MDJ.

Additionally, Magisterial District Judge Sonya McKnight is an outlier among the MDJs as the only judge who saw less than 100 cases during these six months. McKnight saw only 31 criminal cases during this time because she was put on unpaid suspension while she was accused of obstruction in the case of a traffic stop involving her son — a charge she was later acquitted of.<sup>9</sup> Because of this, she wasn't on the bench for much of the time that this data was being collected.

## LIMITATIONS CONT.

The data is collected by hand and cannot account for any potential mistakes on docket sheets or glitches in the UJS database. Thus, we have to assume that the docket sheets are updated, correctly filed, and all listed on the website.

This report does not take detainers or holds into account because that information is not available on the docket sheets. 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. This means 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, or those agencies decide to lift the detainer.

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.

Additionally, in Pennsylvania, criminal docket sheets categorize Latine individuals as white, rather than including Latine as its own group. This introduces multiple limitations. Firstly, it inhibits research about the specific experiences of Latine people in the criminal justice system. Additionally, as the ACLU of PA puts it, the “practice of including [Latine] people in the ‘white’ category can make the white-black gap in racial disparities appear smaller than it actually is.”<sup>10</sup> The data also seemingly allows for only one race to be identified per person, making it unclear how for example an Afro-latine or mixed race person would be categorized.

# OVERVIEW

## WHAT IS CASH BAIL?

Cash bail is a monetary condition imposed by a judge which essentially allows the defendant to buy their freedom pretrial. In theory, bail is meant to incentivize the defendant to return for their trial and is not meant to be a driver of incarceration. If the defendant puts up their own bail money and then shows up to court, the money will be returned to them at the end of the trial process regardless of the verdict. Unfortunately, bail has been coopted as a way to imprison defendants pretrial, undermining their presumption of innocence by incarcerating them before they have been convicted of any crime.

Bail is assigned to a defendant during the preliminary arraignment hearing, which is the first stop in the criminal justice system following arrest. These hearings are presided over by the Magisterial District Judge (MDJ) assigned to the district. At this time, the MDJ has full discretion over whether to assign bail, which type of bail to assign, and the bail amount.

## ARE JUDGES SUPPOSED TO ASSIGN CASH BAIL?

Cash bail is not the only option that MDJs have to incentivize the defendant to return for their trial date. In fact, there are many alternatives to imposing cash bail. The judge may choose to impose unsecured bail, in which the defendant is liable for a sum of money should they fail to comply with the conditions of the bail bond or fail to return for trial. Another option is nominal bail, in which the defendant pays a nominal cash bail amount (for instance \$1.00) and has a "designated person, organization, or bail agency to act as surety for the defendant."<sup>11</sup> Further options that MDJs have are to release the defendant pretrial on non-monetary conditions, or on their own recognizance (ROR) — two options in which the defendant is not made to pay for their own freedom pretrial.

During the preliminary hearing, the MDJ may use their discretion to decide whether to impose a monetary or non-monetary bail condition. If the MDJ chooses to impose cash bail, the MDJ may decide the bail amount. That being said, Pennsylvania's legal code states that when assigning bail, the MDJ must take into account the "financial ability of the defendant," and impose a "reasonable" monetary amount that does not exceed what the defendant would be able to afford.<sup>12</sup> Additionally, the PA legal code states that "no condition of release, whether nonmonetary or monetary, should ever be imposed for the sole purpose of ensuring that a defendant remains incarcerated until trial" and that "amount of the monetary condition shall not be greater than is necessary to reasonably ensure the defendant's appearance."<sup>13</sup>

In sum, when assigning cash bail, MDJs are supposed to account for a person's financial status and refrain from assigning bail which the defendant would not reasonably be able to pay. **Bail was not designed to impose an unbearable burden or act as a punishment for the defendant.** Unfortunately, in practice, this is just what it has become.

## Overview

### 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 \$106,254.<sup>14</sup> 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.<sup>15</sup> Many MDJs do not actually have a legal background. In fact, some, such as MDJ Michael J. Smith, are former law enforcement officers.

### WHO PROFITS FROM BAIL?

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 charge their clients a fee (often 10% of the bail amount) in order to post 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.<sup>16</sup>



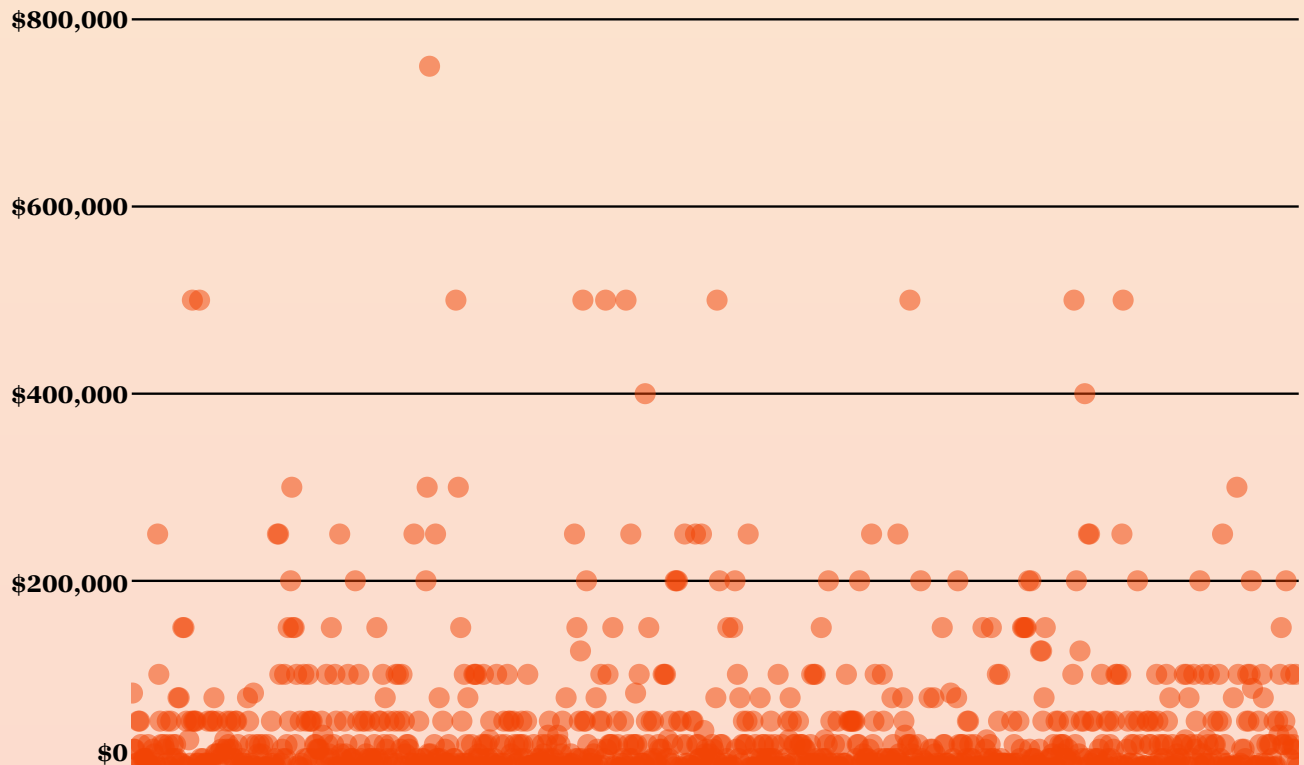
# 2023 BAIL STATS

In the first six months of 2023, \$41,469,083 worth of unpaid cash bail was assigned in Dauphin County.

Average Bail	\$42,576
Minimum	\$1
Maximum	\$750,000
Median	\$15,000

## Bail Amounts Assigned

January - June 2023



# 2022 vs. 2023

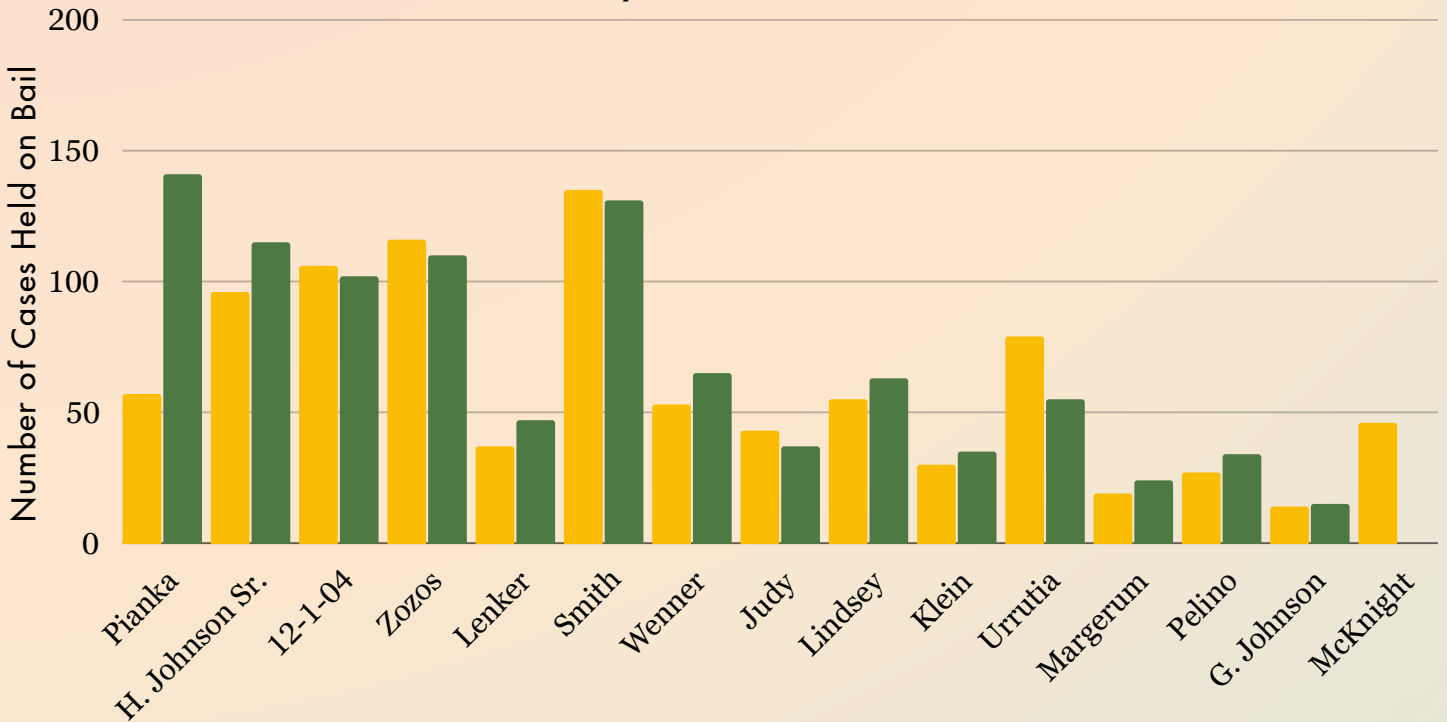
January - June

	2022	2023
Cases	913	974
Total Bail	\$47,348,776	\$41,469,083
Median Bail	\$25,000	\$15,000

8 out of 15 MDJs sent more people to DCP on bail this year than in 2022

## Cases Held on Bail Per Judge

January - June 2022 vs. 2023



## Sheer Numbers

In total, there were **974** cases of individuals jailed on bail at Dauphin County Prison in the first six months of 2023 alone. This is nearly a 7% increase from the same window of time as the year before. Our 2022 report showed that during the first half of that year, there were 913 cases of individuals jailed on bail.

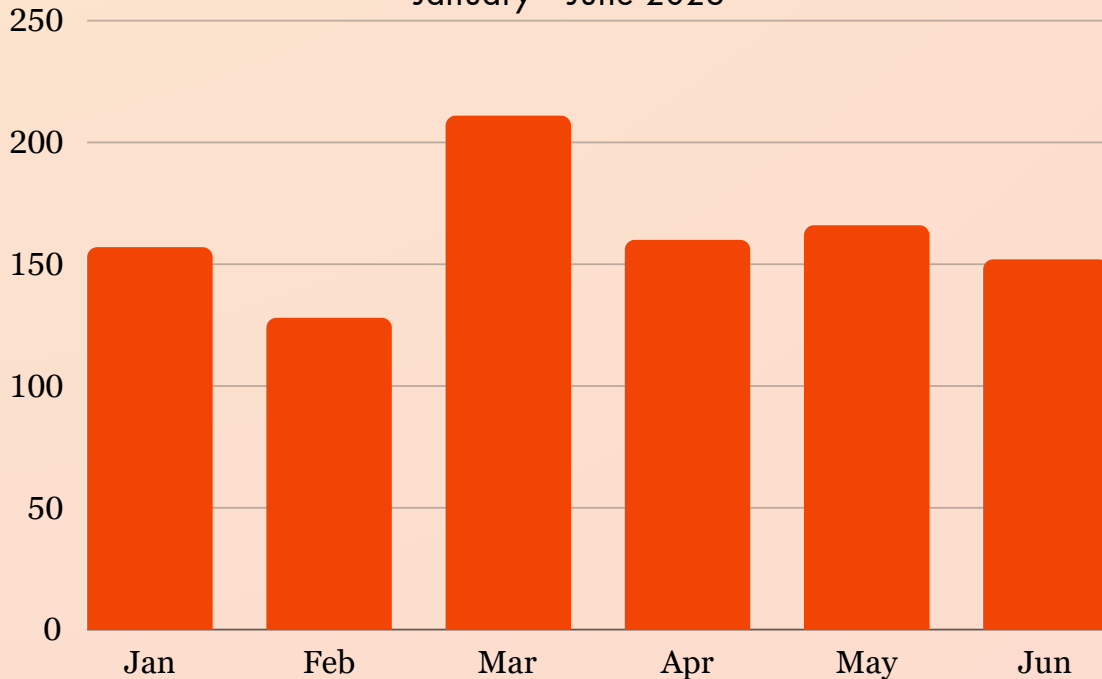
Additionally, the data shows that in Dauphin County, **27%** of criminal cases for January-June 2023 included pretrial detention because of an inability to pay bail (974 out of 3,547 total docket sheets). This means that **over a quarter** of defendants spent time in Dauphin County Prison because they could not meet bail.

**974**  
people imprisoned on bail

out of  
**3,547**  
total cases

### Total Cases Held on Bail Per Month

January - June 2023



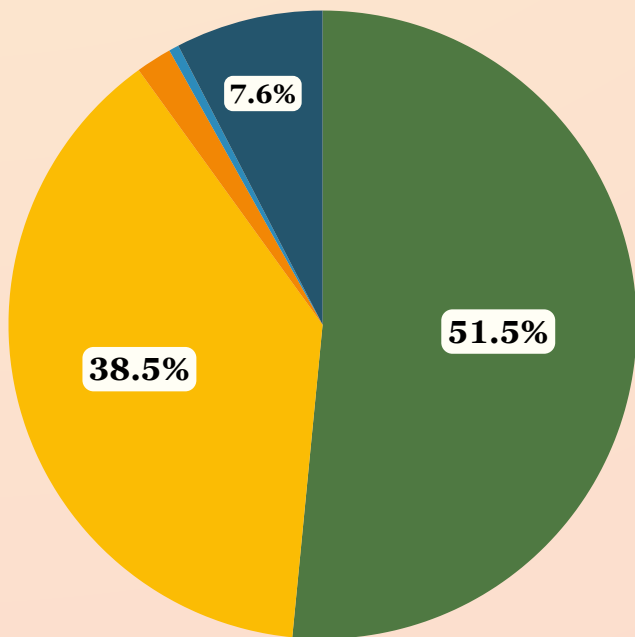
# RACE & BAIL

Dauphin County residents do not feel the impact of cash bail equally. The data shows that Black community members are disproportionately affected by cash bail. From January to June 2023, **over half (51.5%)** of those held on bail in Dauphin County Prison were Black, while **38.5%** were white. It is crucial to look at these numbers compared to the racial makeup of Dauphin County as a whole. According to data from the U.S. Census Bureau, less than 20% of Dauphin County is Black (19.1%), while nearly 70% is white (69.6%).<sup>17</sup> This shows that not only are more Black defendants held on bail in DCP, but Black defendants are held on bail at a rate that is disproportionate compared to the county's demographics. These findings are consistent with last year's DCBF report, as well as research from the ACLU of Pennsylvania.<sup>18</sup>

Many variables could be fueling this disparity -- such as policing tactics, arrest rates and spatial and income disparities, in addition to the actual bail decisions made by MDJs -- so it is not possible to pin the disproportionate impact of cash bail on Black individuals in the county on cash bail alone. However, this data is indicative of larger spatial and racial inequalities within the criminal justice system.

## Race of Those Held on Bail\*

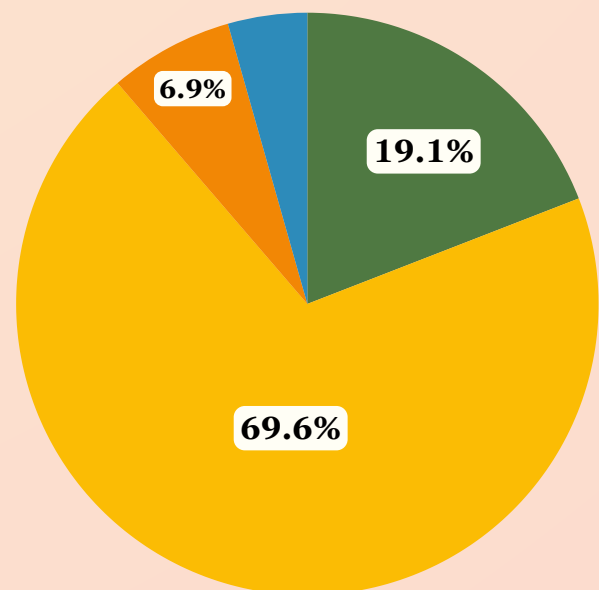
January - June 2023



● 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

# PLACE & BAIL

## The Impact of MDJs

Cash bail is not only racially targeted, but there is a **spatial dimension** as well. This is best highlighted by examining the proportion of cases seen by each Magisterial District Judge which includes jail time for unpaid bail. The 2022 report exclusively looked at the number of cases of people held on bail that each judge presided over. While this was helpful, it became unclear whether certain MDJs really sent people to jail more often than others or whether that data would even out if compared to the total number of cases each judge saw overall. To fix this issue, the 2023 data includes the overall number of cases overseen by each MDJ across the six months. Then, the amount of cases of people held on bail was examined as a percentage of the total cases each MDJ oversaw. The results show vast differences in the percentage of cases each MDJ sent to jail on bail. These numbers are shown in the table below.

There are four judges that stand out among the rest as having the highest proportion of total cases held on bail. These judges are Barbara Pianka, Hanif Johnson, District 12-1-04, and Paul Zozos — all of whom represent districts in Harrisburg city. The fifth Harrisburg MDJ is Sonya McKnight, who is an outlier in the data as she was serving a suspension for much of the six months.<sup>19</sup> In all, the Harrisburg MDJs account for **48%** of the cases of individuals held on bail in the first six months of 2023.

These numbers show that the likelihood of imprisonment on bail may be impacted by where a person is arrested. There are significantly higher rates of imprisonment among defendants who have their preliminary hearing in one of the Harrisburg districts.

Magisterial District Judge	Percent of Total Cases Held on Bail
Barbara W. Pianka	50.36%
Hanif L. Johnson, Sr.	43.07%
12-1-04	40.32%
Paul T. Zozos	38.87%
Kenneth A. Lenker	29.75%
Michael J. Smith	24.58%
William C. Wenner	24.34%
David H. Judy	21.76%
Joseph S. Lindsey	19.87%
Dale E. Klein	19.02%
Marian Urrutia	17.57%
Rebecca Jo Margerum	17.14%
Dominic Pelino	14.72%
Gregory D. Johnson	0.13%
Sonya M. McKnight	0%

● Judges representing Harrisburg



## Harrisburg to DCP Pipeline

What seems to be emerging from the data is a Harrisburg-to-Dauphin County Prison pipeline in which Harrisburg residents are disproportionately affected by pretrial detention. During these six months, **42%** of criminal cases heard in Harrisburg included pretrial detention, compared to only **21%** of the cases seen by all other Dauphin County MDJs. This is a vast disparity. During these six months, defendants in Harrisburg were hit with bail amounts they could not pay at **double** the rate of everyone else in the county.

This is significant for a few reasons. Firstly, Harrisburg is a Black majority city — with Black residents comprising 50.3% of the city's population — while Dauphin County as a whole is majority white (about 70%).<sup>20</sup> For districts in Harrisburg to have such a disproportionately high rate of pretrial incarceration points to the racially specific distribution of cash bail. This may be the direct result of MDJ bias, but more likely is a combination of contributing factors including arrest rates, socioeconomic conditions, and a broad range of systemic inequalities.

Further, this trend can be contextualized by sociologist Jessica Simes' analysis on the spatial dimension of punishment. In her 2021 book *Punishing Places: The Geography of Mass Imprisonment in America*, Simes demonstrates that, contrary to popular belief, “the highest current rates of incarceration are in America’s small cities and nonmetropolitan counties.”<sup>21</sup> Through quantitative and qualitative spatial analysis, Simes finds that residents of small cities are particularly susceptible to incarceration because of factors affecting small cities today, such as deindustrialization, lack of public transportation, isolation from social services, and disinvestment.<sup>22</sup> She finds that the disproportionate incarceration rates felt in small cities makes mass incarceration a “community-level hazard” in these places. While Simes focuses specifically on incarceration, this issue is just as relevant in the context of pretrial incarceration. In Harrisburg, cash bail can be framed as a “community-level hazard” which disproportionately targets residents of the city.

Simes additionally discusses the implications of spatially concentrated punishment on affected communities. Specifically, Simes argues that “community loss” is a crucial aspect of mass incarceration. She notes that “mass imprisonment creates a tremendous resource loss, removing individuals from work, family, and community roles.”<sup>23</sup> Her findings are corroborated by Clear (2008), who argues that “imprisonment affects the children of people who are locked up and their families; it affects community infrastructure—the relations among people in communities and the capacity of a community to be a good place to live, work, and raise children—and it affects how safe a community is to live in.”<sup>24</sup> Incarceration creates a drain on economic and social participation and decimates the collective efficacy of a community. Maintaining strong informal networks is crucial to communal wellbeing, increasing individuals' sense of investment in their own community. The flow of people into the criminal justice system dismantles this sense of mutual investment by decreasing individuals' trust in their community.

# CONCLUSIONS

## IS CASH BAIL WORTH IT?

Despite all of the negative effects of cash bail at the individual and community level, many people see cash bail as a kind of necessary evil, keeping crime and danger away from Dauphin County residents. What these people forget is that those held on bail are also our valued community members. Cash bail poses very real dangers to these defendants, as well as Dauphin County as a whole. Because of this, it is crucial to examine pretrial detention and cash bail as a community-level hazard which harms our neighbors, friends, family, and community.

Studies suggest that cash bail does not actually work to incentivize trial attendance. Sardar (2019) argues that “despite the level of a violation, nearly every study conducted on money bail has shown that its efficacy in keeping defendants from fleeing is arguably non-existent.”<sup>25</sup>

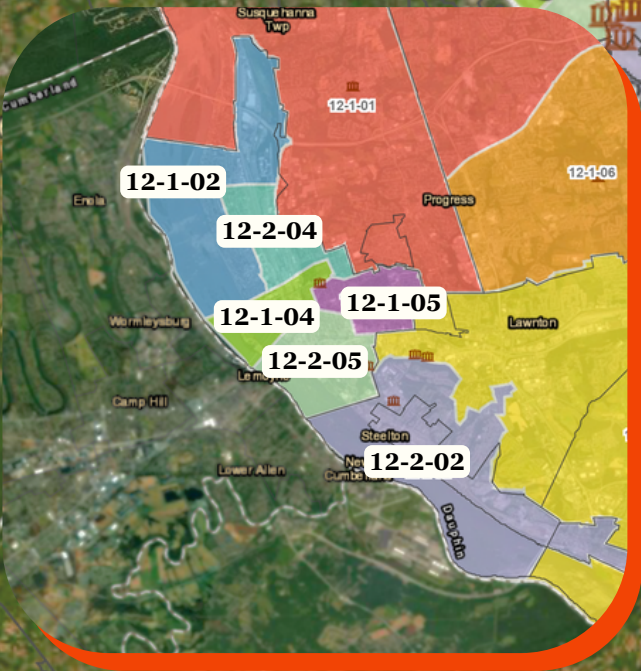
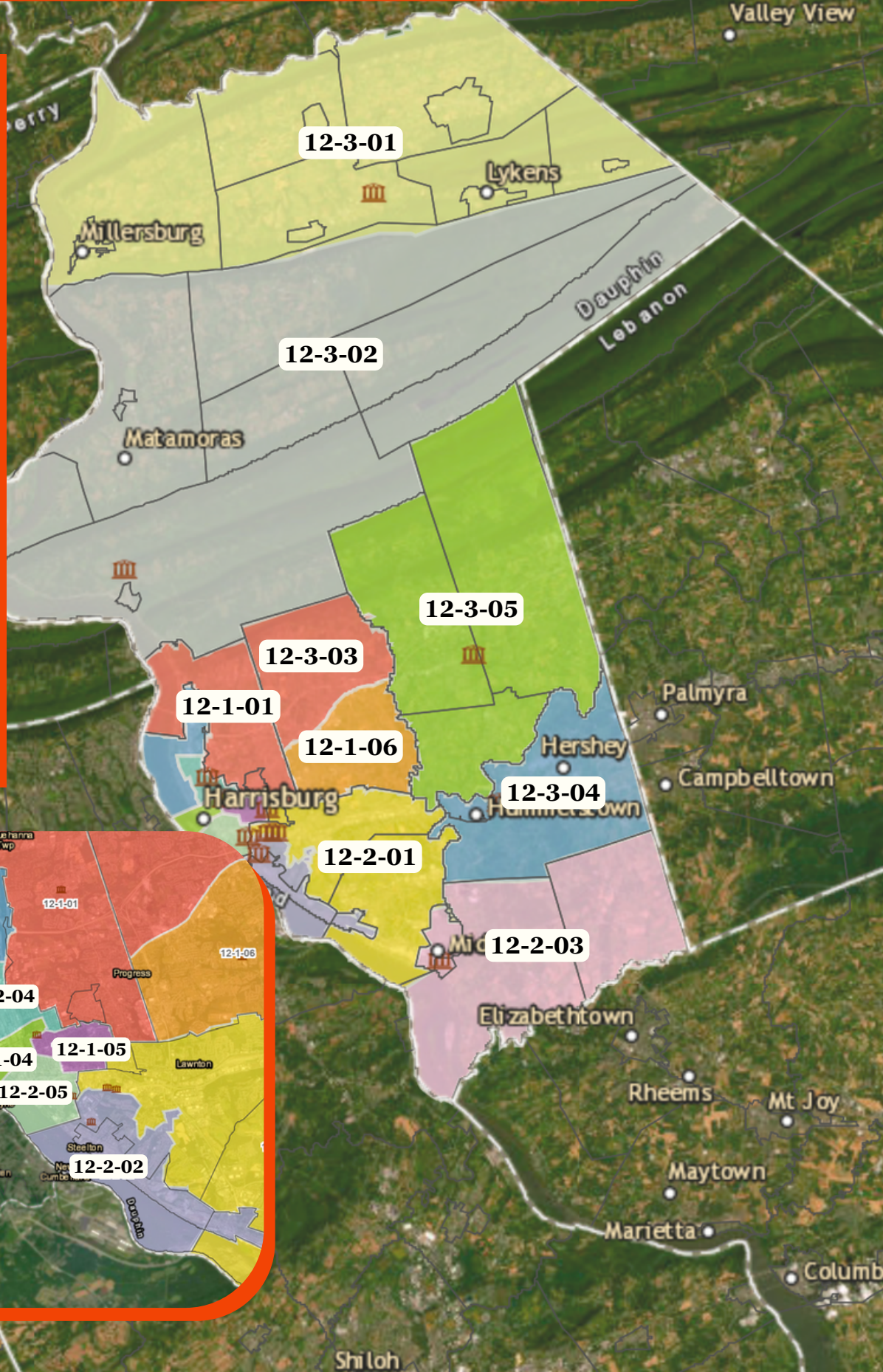
As a strategy ostensibly meant to improve trial attendance, cash bail is ineffective at best and dangerous and even fatal at worst. On the other hand, cash bail is highly effective as a means of incarcerating our community members. Bail is a practice which reinforces and upholds our spatially and racially targeted system of mass incarceration and as such must be curtailed or eliminated.

*“we cannot give up liberty  
for a false sense of safety”*<sup>26</sup>

*Muhammad B. Sardar*

# FIND YOUR MDJ

12-1-01	Urrutia
12-1-02	Pianka
12-1-04	Vacant MDJ
12-1-05	H. Johnson
12-1-06	Lindsey
12-2-01	Smith
12-2-02	Lenker
12-2-03	Judy
12-2-04	McKnight
12-2-05	Zozos
12-3-01	Margerum
12-3-02	G. Johnson
12-3-03	Wenner
12-3-04	Pelino
12-3-05	Klein





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