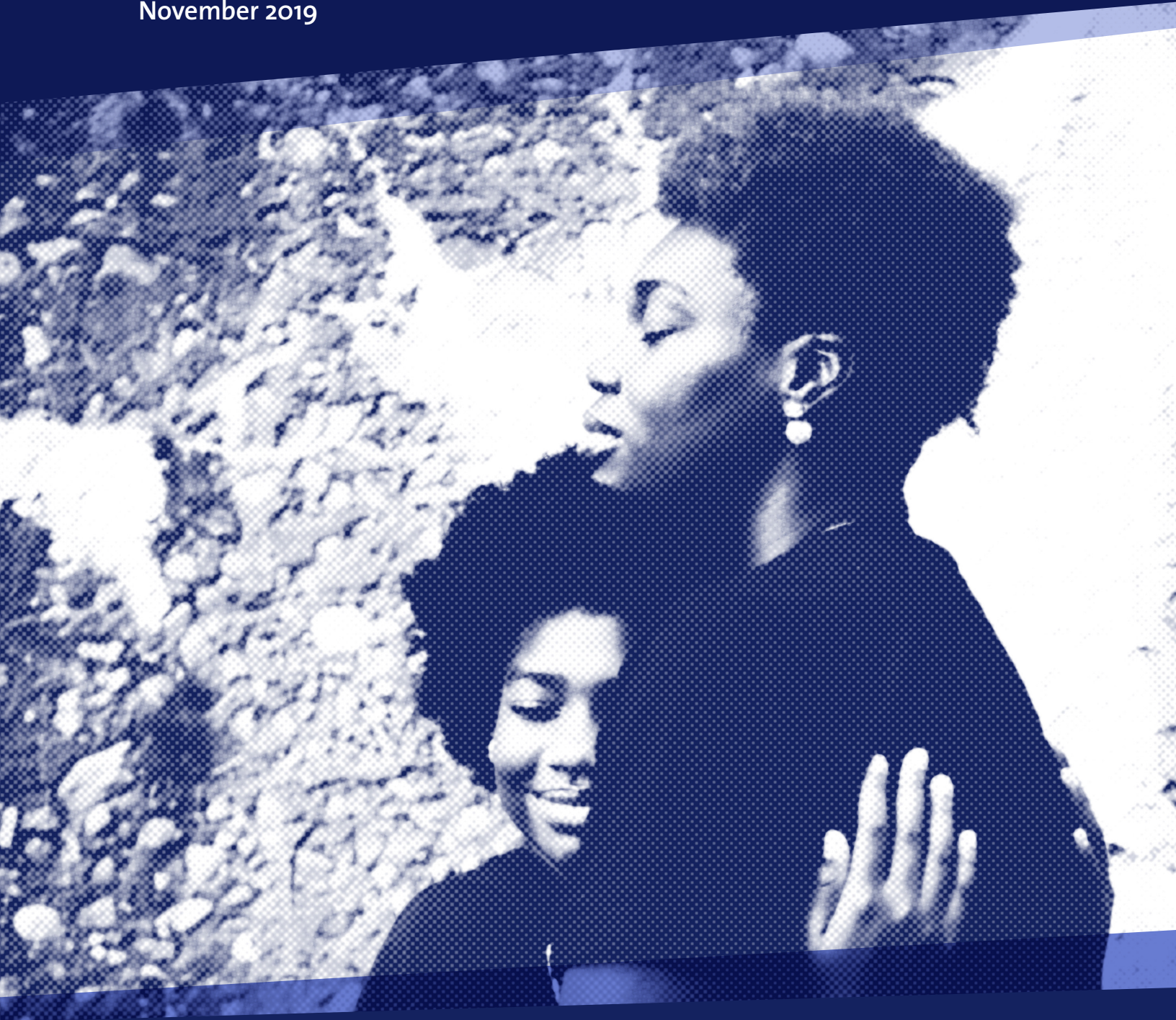


A Window Into a Future Without Cash Bail

A Snapshot Report on Resolved Cases
of The Philadelphia Bail Fund

November 2019



Philadelphia Bail Fund

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The Philadelphia Bail Fund is deeply appreciative to all of our supporters whose donations—big and small—make our work possible. We are also enormously thankful to our dedicated volunteers who attend bail hearings and participate in bailouts to help free our clients. Their support and commitment to creating a better, more humane criminal justice system in our city remains an inspiration for this work.

Finally, we are most grateful to our clients, some of whose voices are included in this report. We believe their voices, experiences, and concerns offer important insight that is necessary to achieving any meaningful reform. Only when our system begins to genuinely appreciate and value their voices and experiences will it start to become more just for all.

About the Philadelphia Bail Fund

The Philadelphia Bail Fund is a 501(c)(3) charitable bail organization that was founded in May 2017. The Fund prevents unnecessary pretrial detention by paying bail for Philadelphians who cannot afford their own bail, and advocates for the end of cash bail in Philadelphia. The Fund pays bail at the earliest stage — ideally before individuals are transferred from a holding cell at the local precinct to jail — for people who are indigent and cannot afford bail.

The goal of the Philadelphia Bail Fund is to shift Philadelphia’s bail system from one that is based on wealth to a fairer and more effective system based on a presumption of release before trial, except in the most exceptional circumstances, and which does not condition release on financial means.

www.phillybailfund.org

Report Highlights

- Since January 2018, the Philadelphia Bail Fund has posted bail for 130 indigent people in Philadelphia. To date, 75 of those cases have resolved, i.e., reached a disposition.
- Of the 75 resolved cases, 71% (53 cases) have been dismissed/withdrawn before trial. Of the rest, 5% (4 cases) received a conviction with jail time. The remaining 24% (18 cases) were convictions where the person was given probation, or sentenced to intermediate (non-incarceratory) punishment.
- By posting bail for our clients whose cases have resolved, we prevented an estimated 8,500 days (23 years combined) of pretrial detention in Philadelphia jails, estimated to have saved Philadelphia over \$850,000.
- 89% of our clients are people of color, and 80% are Black. 72% of our clients were identified as male and 28% were identified as female.
- 96% of our clients were assigned public counsel at their bail hearing due to their inability to afford private counsel.
- Over 90% of our clients appeared for all of their court hearings, demonstrating that the vast majority of people will meet all their court obligations even though they are not at risk of losing their own money to cash bail. Those who failed to appear for a court date all ultimately presented themselves and resolved their case.
- 76% of our clients live in zip codes where the median annual household income is below \$30,000. Our most served zip code, 19133, also has both the highest unemployment rate (26%) and the lowest median household income (\$13,828) in the city of Philadelphia.
- 85% of our clients were bailed out within the first 72 hours after their arrest, and 63% were bailed out the same day as their hearing from a police district (before being transferred to the city's jails).
- For our resolved cases, we paid \$115,430 in total, with an average of \$1,539. Our lowest and highest paid bails were \$100 and \$7,500, respectively.
- Our youngest client was 17 and our oldest was 73.
- The shortest case length was 16 days and the longest length was 458 days.

Introduction

Every day, hundreds of Philadelphians living in poverty languish in our jails awaiting trial simply because they cannot afford to pay for their freedom. These individuals' lives are severely disrupted. They are stripped of the presumption of innocence and right to a fair trial, isolated from their families, and risk losing their jobs, housing, custody of their children—and in some cases, their lives—all without ever being convicted of a crime. Bail destroys lives, communities, and neighborhoods.

This report paints a picture of an alternative approach—one that doesn't jail people simply because they are poor; one that provides court reminders and transportation support rather than immediate punishment; one that keeps communities whole rather than tearing them apart.

Using data collected from the Philadelphia Bail Fund's first 75 resolved cases, this report illustrates clearly that Philadelphia's current system of assigning cash bail to people who are considered poor is unacceptable.

- **Since January 2018, the Philadelphia Bail Fund has posted bail for 130 indigent people in Philadelphia. Of those, 75 cases have been resolved. For the 75 cases, we paid \$115,430 in bail and over \$3,000 in fees. The average bail posted was \$1,539.** For people living in poverty, as little as \$100 can force someone to be held in jail awaiting trial. Yet, when the Philadelphia Bail Fund posted bail for these people, each of them was released and able to resolve their case from a position of freedom. Importantly, the Philadelphia Bail Fund's criteria for eligible clients is broad, helping to ensure that the clients we serve are representative of indigent people being held in Philadelphia's jails awaiting trial.
- **A shocking 71% (53) of our clients' cases were dismissed/withdrawn entirely before trial.** There are numerous reasons a case can be dismissed before trial. These include a witness failing to appear, necessary police officer unavailable, prosecutorial discretion, and lack of evidence. Court dockets, however, are inconsistent in detailing the reason for a withdrawal/dismissal in every case.
- **Of the rest of our clients who received a conviction, only 5% (4 people) received jail time.** The remaining 24% (18 clients) who received convictions were given probation, or sentenced to intermediate punishment, whereby they were found guilty or pleaded guilty but were released into the community under strict guidelines and conditions.

- **Our clients - most of whom faced felony charges - represent a wide range of neighborhoods, zip codes, backgrounds and charges. What they have in common is an inability to post bail, sometimes as low as \$100, to secure their freedom until their case is resolved.**
- **Absent intervention, our clients would have spent an estimated combined total of over 8,500 days (23 years combined) in jail if they chose to fight their cases to their conclusion and not pleaded guilty.**
- **The overwhelming majority of our clients (89%) are people of color, and 96% were deemed by the court to be unable to afford counsel at the time of their bail hearing.**
- **76% of clients live in zip codes where the median annual household income is below \$30,000.** Our most served zip code, 19133, also has both the highest unemployment rate (26%) and lowest median household income (\$13,828) in the city of Philadelphia.

Complementing the data are the stories of some of our clients—individuals who know through direct experience how the current system works and how it fails so many communities. Their experiences—and their lives—matter just as much as anyone else’s in our city, and we are committed to ensuring our pretrial system evolves to reflect this truth.

Bail funds are not the solution to an unjust system. However, our power lies in our ability to disrupt the status quo one person at a time and, in doing so, show that a just system is possible. Despite recent reforms, we still have a long way to go toward achieving true justice. Our work will not stop until we as a bail fund are no longer needed—until freedom is no longer for sale.

Methodology

The data presented in this report was gathered from a number of sources. We relied on the data included on the publicly available court dockets for each case, including a list of charges, the date bail was set and paid, a list of all court dates, the case disposition, and the zip code and date of birth of the person arrested. In cases where the court docket was not available, we consulted internal records and confirmed the disposition date with court officials.

To determine days saved in each case, we calculated the time between the bail hearing and the case disposition. In the seven cases where there was a Failure to Appear (FTA), we subtracted the time from the date of FTA to the next court date, as these days were added to the case because of an individual's failure to appear. For each FTA, the case eventually resumed after the person returned to court.

The frequency of travel assistance provided was determined using our internal records and reviewing our weekly court reminders and responses.

Publicly available court summaries for each client include their perceived race and gender. The courts, however, do not distinguish between "white" and "Latinx" or "black" and "Latinx" (i.e., there is no "Latinx" or "Hispanic" category.) To provide more accurate data, we relied on our own records and the perceived race of the individual in instances where we observed the bail hearing. Court summaries also unfortunately do not distinguish individuals who identify as transgender or non-binary.

It should also be noted that the Philadelphia Municipal Court, through its early bail review (EBR) program, does offer the possibility of release after five business days for certain individuals whose bails are low and who have been charged with a low-level offense. However, the list of charges and factors used by a judge are not publicly available, and there is no way to predict a judge's decision in every case. The vast majority of our clients whose cases have resolved faced non-drug related felony charges. Moreover, with people's jobs, housing, and custody of children at risk, we believe a delay of five business days for review of a bail decision is five days too many. The necessary solution is the presumption of release for the vast majority of people, not a review hearing for certain bail amounts and charges.

Note on Case Selection & Charges

When deciding to whom to provide bail assistance, the Philadelphia Bail Fund uses the four criteria outlined on page 19. In total, 71% of the bailouts discussed in this report came about from court watching – that is, volunteers going to the courthouse on randomly assigned days to watch bail hearings and post bail. The other 29% of bailouts came from community referrals. The four criteria were used across both sets. There are several cases in which we did deviate from the criteria (i.e., when someone was assigned private counsel or had been incarcerated for more than 72 hours) due to extenuating circumstances.

The lead charges for those we bailed out vary greatly and include 26 different charges.¹ The vast majority of our clients faced felony charges, and a few faced only misdemeanor charges. We were unable to determine the lead charge in 3 cases since public dockets in these cases are no longer available.

Importantly, we do not put a significant focus on charges in this report because we believe to do so would distract from the real issue: today, in Philadelphia, regardless of the charge, only wealth separates those who are caged from those who are set free pretrial.² Our goal is to shift Philadelphia’s pretrial detention system from one that is based on wealth to one based on the presumption of release, in all but rare circumstances, and which does not condition release on financial means.

1. Charges discussed here are those that were assigned at the time of each person’s arraignment (bail hearing). Charges can and often do change as a case progresses.

2. Under certain circumstances, an individual is denied bail and held in jail throughout the duration of their case. These circumstances include (1) for capital offenses or for offenses for which the maximum sentence is life imprisonment; or (2) when the magistrate believes that no condition or combination of conditions other than imprisonment will reasonably assure the appearance of the person in court and/or the safety of the community.

Outcomes for Philadelphia Bail Fund Resolved Cases

Cash bail is regularly issued by court magistrates and it is regularly recommended by prosecutors in Philadelphia's criminal legal system.³ From January 1, 2019 through November 2, 2019, cash bail was assigned in approximately 60% of all Philadelphia criminal cases (17,112 out of 27,888).⁴ The stated purpose of cash bail is to ensure people return to court and meet all their court obligations. However, if a person cannot afford to post bail, as many poor people in Philadelphia cannot, the person is incarcerated pretrial despite their presumed innocence.

Therefore, in practice, bail is used to punish legally innocent indigent people and their families. Every day, bail disrupts the lives of already struggling families, trapping them deeper into poverty and entangling them further into the system. Detained on bail, individuals' lives are thrown into disarray as they risk job loss and eviction, and suffer the trauma of incarceration despite never being convicted of a crime.

Due to the severe impact that incarceration has on an individual's life when held in jail awaiting trial, bail also serves as a powerful tool to compel guilty pleas. Those unable to pay for their freedom are often forced to choose between languishing in jail for months to await trial, or pleading guilty to a crime, even if they are innocent, in order to obtain a time served or other non-incarceratory sentence and go home immediately. While pleading guilty may allow an individual to go home, it leaves them with a criminal record that carries serious collateral consequences. Both of these "choices" are unacceptable.

Each of our clients was given a different choice: to fight their case from home without the undue burden of needing to find the money to post their own bail. In other words, by posting bail for our clients we eliminated the condition of release on financial means. The results are striking. Of our 75 resolved cases, over 70 percent of these clients had their case dismissed entirely before trial.⁵ Of the rest who were convicted, only 4 were sentenced to jail time.

The outcomes of our clients' cases reveal Philadelphia's cash bail system for what it is: a flawed, disastrous system that targets vulnerable people. Arrest does not mean guilt; bail has no relation to culpability.

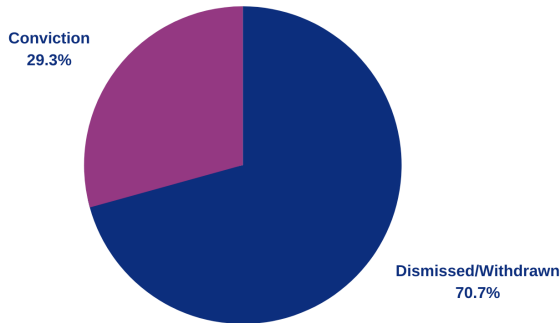
3. Alternatives to cash bail under current law include: Release On Recognizance (release without conditions, referred to as "ROR"); unsecured bail (release under the condition that a person must pay a fee if they do not return to court); and non-monetary conditions such as check-ins with pretrial services and drug treatment.

4. Data computed from Philadelphia District Attorney's Office, Public Data Dashboard, Bail Report, https://data.philadao.com/Bail_Report.html accessed on November 3, 2019. The 60% number includes 13% of "unknown bail" - "a categorization of bail amount for cases for which we do not have sufficient bail data," according to the District Attorney's Office.

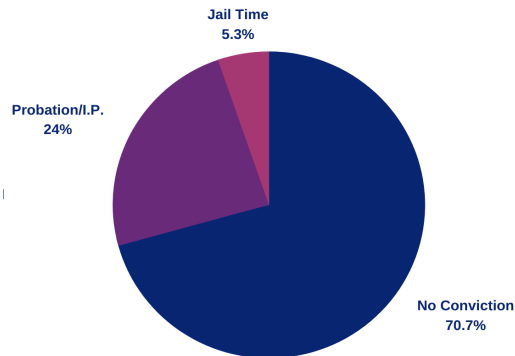
5. There are numerous reasons a case can be dismissed before trial. These include a witness failing to appear, necessary police officer unavailable, prosecutorial discretion, and lack of evidence. Court dockets, however, are inconsistent in detailing the reason for a withdrawal/dismissal in every case.

Resolved Cases Snapshot

Conviction Rate



Total Outcomes



Total Amount of Bail Set: **\$1,287,700** ⁶

Total Paid for Bail: **\$115,430** ⁷

Average Bail Paid: **\$1,539**

Lowest Bail Paid: **\$100** Highest Bail Paid: **\$7,500**

Shortest Case Length: **16 days** Longest Case Length: **458 days**

85% of clients bailed out in the first 72 hours after arrest

63% of clients bailed out from a police district ⁸

91% court appearance rate ⁹

Over **8,500 days (23 years combined)** of pre-trial detention prevented

An estimated **\$850,000** saved by preventing pre-trial detention ¹⁰

6. This number reflects the total amount set. Importantly, in Philadelphia, a person has to pay 10% of the bail amount to be released. For example, if bail is set at \$25,000, an individual would need to pay \$2,500 for release.

7. This number reflects the total amount the Philadelphia Bail Fund has paid in all the resolved cases discussed in this report -i.e., 10% of each bail set. In a few cases, the Philadelphia Bail Fund paid half or part of the 10%.

8. Everyone has their bail hearings at one of six police districts in the city. If bail is set and they are unable to afford it, they are transported to the city jail and detained there as they await trial. Because the majority of our bails are posted immediately after bail hearings, we are able to intervene to free most of our clients from the police district, before they are transported to the city jail.

9. Importantly, for all of our resolved cases, all of those who failed to appear for a court date ultimately returned to court and resolved their case.

10. See Hayden Hitman, Philadelphia Is Looking to Skip Bail. "According to Shawn Hawes, a spokesperson for the Philadelphia Department of Prisons, the city pays somewhere closer to \$100 to \$110 per day. Hawes noted that the figure can fluctuate depending on variable costs, including inmate medical expenses." <https://www.phillyvoice.com/could-philadelphia-prisons-do-away-bail/>.

Darnell's Story ¹¹

Darnell believed his situation could not get worse. He was unemployed and homeless, living in an encampment under a bridge in the Kensington section of Philadelphia. It was there that police arrested him on a drug possession charge, alleging he possessed and delivered drugs. Darnell maintained his innocence.

At his bail hearing – lasting less than 2 minutes – Darnell's bail was set at \$10,000. Unable to pay \$1,000, he was sent to Curran Fromhold Correctional Facility, where he sat for two days before the Philadelphia Bail Fund paid his bail, allowing him to fight his case from a position of freedom.

After over ten hearings and 400 days, Darnell's case was dismissed. For Darnell, freedom made all the difference: **"I didn't feel the need to take any type of a deal in exchange for my freedom. I didn't have to plead to a crime I didn't commit. I got to see justice. It was delivered the day my case was dropped."**

Darnell now lives in his own apartment thanks to support from a city agency and local social service provider. After years of homelessness, having his own place is a dream come true for Darnell. But it wasn't the only one. While free, Darnell received training to become a community health worker with a non-profit in the Kensington area.

"I really want to continue this work. I was really lucky. I want to make sure I pay it forward for others."

11. To protect the privacy of our clients, we use pseudonyms here and throughout this report.

Demographics

Like the criminal legal system as a whole, bail disproportionately harms poor communities of color. Black and Latinx people—already disproportionately policed and surveilled—often have less access to the financial resources needed to pay for their freedom than their white counterparts. Implicit and explicit bias only make these racial disparities worse. Research has found that bail is imposed more frequently and in higher amounts on Black people than on similarly situated white people.¹² Moreover, in Philadelphia, a recent study has also shown that race is an important predictive factor in whether an accused person will make bail, or sit in jail awaiting trial.¹³

The demographic data from our resolved cases highlight how the burden of bail falls unevenly on poor, Black people, their families, and communities. The overwhelming majority (80%) of our clients are Black, and 96% were assigned public counsel at their bail hearing due to their indigence. At this point, the magistrate and the District Attorney’s Office know that any meaningful amount of money is likely to hold a person in jail. 76% of clients live in zip codes where the median annual household income is below \$30,000.¹⁴ Moreover, our most served zip code, 19133, has the highest unemployment rate and the lowest median household income in the city of Philadelphia.¹⁵

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

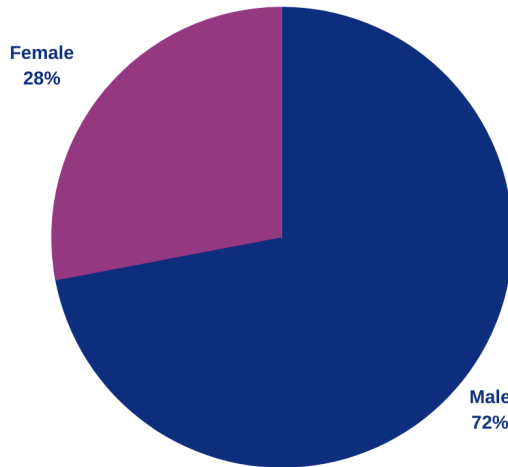
13. David Arnold, Will Dobbie, Crystal S Yang, Racial Bias in Bail Decisions, *The Quarterly Journal of Economics*, Volume 133, Issue 4, November 2018, Pages 1885–1932, <https://doi.org/10.1093/qje/qjy012>.

14. 76% of our clients live in the following zip codes: 19133, 19143, 19140, 19124, 19134, 19104, 19146, 19122, 19139, 19132, 19141, 19131, 19144, and 19142. Each zip code has a median household income below \$30,000. See Zip Atlas, <http://zipatlas.com/us/pa/philadelphia/zip-code-comparison/median-household-income.htm>.

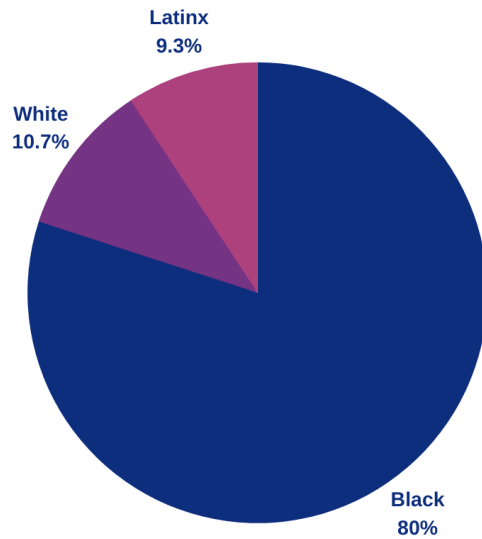
15. See Zip Atlas, <http://zipatlas.com/us/pa/philadelphia/zip-code-comparison/median-household-income.htm> and <http://zipatlas.com/us/pa/philadelphia/zip-code-comparison/unemployment-rate.htm>.

Demographic Snapshot

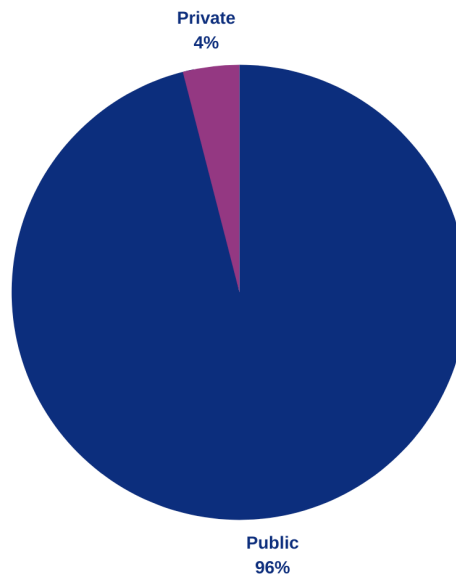
Perceived Gender



Perceived Race

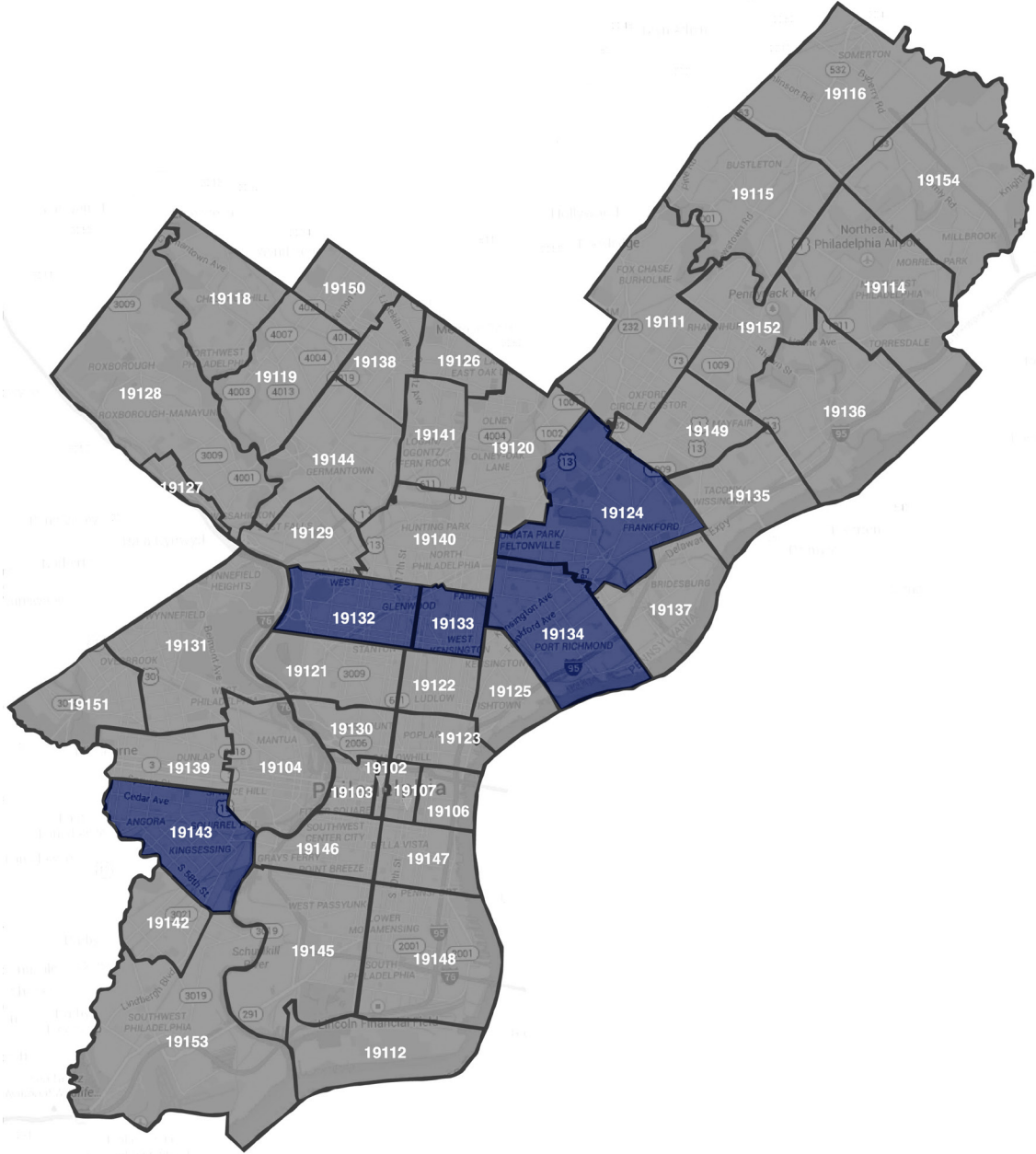


Counsel Assigned at Bail Hearing



37% of clients requested and received transportation assistance from PBF
75 rideshare rides and **20** Septa Key Cards were provided
Youngest Age: **17** Oldest Age: **73**

Most-Served Zip Codes



Kim's Story

Kim is a 25-year-old single mother of three. In mid 2018, Kim was arrested by police on an assault charge. It was her first arrest. The magistrate set her bail at \$5000, and she couldn't afford the \$500 needed for her release. **"When I was at that police station and she [the magistrate] said \$5000, I cried. I prayed. I knew I couldn't pay it."**

Kim's first thoughts went to her young children. **"I was afraid I'd be in jail away from my children. They were with their grandmother. But it's not the same – they needed me."**

The Philadelphia Bail Fund posted Kim's bail a few hours after her bail hearing. She did not have to go to jail. Instead, she returned to her home and children in Southwest Philadelphia and was able to work with her attorney to fight her case.

After several months, Kim's case was dismissed before trial. She has since gotten her record expunged and would like to return to school in the future. When asked if she had any other wishes, she said, **"I just want to be the best mom I can be. That's really it."**

Meet More Clients

Kierra, 26, a mother eight months pregnant with her second child, was arrested and assigned **\$25,000** bail. The \$2,500 cash bail was unaffordable for this young mother. Without access to the necessary funds, she would have been detained in jail for over 65 days, given birth to her child while incarcerated, and been separated from her family all before ever being convicted of a crime. Instead, she returned home within 24 hours, returned to work, delivered her baby several weeks later, and **her case was later dismissed when the complaining witness failed to appear after multiple hearings.**

A father of four, Calvin, 36, was assigned **\$10,000** bail. His bail was lowered to \$2,000 a month later, but his family still could not afford to pay the \$200 needed for his release. He spent nearly two months in jail before his bail was posted, just in time to allow him to return home to spend Christmas with his kids. **After several hearings and over 100 days, Calvin's case was dismissed.**

Josh and his wife were temporarily homeless when he was arrested and assigned **\$2,500** bail. The couple had two toddlers and another baby on the way. \$250 was all that separated Josh from his wife and family. His wife was distraught: "It seemed impossible, and I feared not having my husband here to help me at least until his trial." **After spending one day in jail, Josh was freed and fought his case from home. His case was later dismissed months later.**

William, 25, was arrested in the summer of 2018 and assigned **\$5,000** bail. Unemployed, he couldn't afford the \$500 needed for his release. The Philadelphia Bail Fund posted William's bail the same day he was arraigned. **As William's case progressed, the District Attorney's Office offered him a plea agreement, which he rejected. Over 200 days later, his case was dismissed, as a result of the police officer not appearing for multiple hearings.**

Khaleel, 18, was arrested for the first time and his bail was set at **\$100,000**. He and his family could not afford \$10,000 for his release. Thanks to the combined support of the Philly Bail Fund and the Philly Community Bail Fund, Khaleel was able to be released and fight his case from home. **Charges were later dismissed for lack of evidence. While free, Khaleel welcomed a new member to his family: a baby girl whose birth he likely would have missed if he remained in jail pretrial.**

Our Overall Impact For All Cases (Open & Closed)

130 people freed since posting our first bail in January 2018

We have prevented the caging of 130 people in Philadelphia by posting over \$212,810 in bail and over \$4,000 in fees.¹⁶

90% of all our clients appear for their court dates

This debunks the argument that cash bail is needed as an incentive for people to show up for court.

84% of clients were freed within 72 hours after arrest

This timeliness protects a person's ability to keep their job, home, and custody of their children.

Over 15,000 estimated days of pretrial detention prevented, estimated to save Philadelphia \$1.5 million.¹⁷

The combined impact of providing bail assistance has meant nearly 41 years of pretrial detention avoided. At an estimated cost of \$100/day per person in Philadelphia jails, this amounts to \$1.5 million in avoided costs.

16. The First Judicial District charges a \$10 fee to post bail in person and \$12.75 when bail is posted online. Additionally, until October 2018, the courts deducted a 30% fee from each bail posted at the conclusion of a case. \$4,000 reflects bail fees paid and the amount deducted from cases resolved prior to October 2018.

17. This estimate is based on days saved from all resolved cases as well as estimates on our current open cases. We currently have 55 open cases.

How We Serve

Freeing Our Neighbors

- Prevent unconstitutional and unnecessary pretrial jailing
- Allow people to fight their cases from home
- Avoid loss of employment, housing, and custody of children and keep families together
- Eliminate the cost of freedom for people who are living in poverty

Providing Pre-trial Support

- Provide text/call court reminders to clients
- Assist with transportation to and from court
- Connect with local social service providers and participatory defense hubs

Advocating for Systemic Change

- Coordinate Philly Bail Watch, a community court watch program
- Introduce volunteers (more than 200 to date) to Philadelphia's bail system
- Release public reports on bail practices, which included findings and recommendations
- Party to a federal lawsuit against the First Judicial District and Sheriff to permit audio recording of bail hearings and promote transparency in the bail process
- Meet with local policymakers and key stakeholders to push for systemic reform

Who We Serve

The Philadelphia Bail Fund has four main criteria to determine the eligibility of clients:

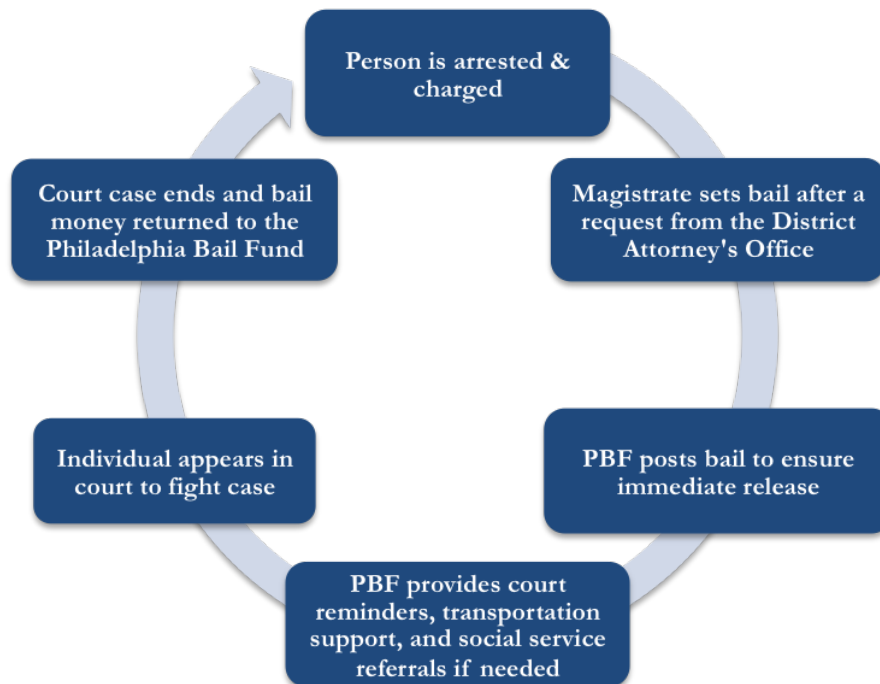
Indigence: Because our current system targets and harms the poor, we focus on providing bail assistance to individuals who cannot or likely cannot afford to pay bail. Most often, we use the court's assignment of a public counsel as a proxy for a lack of funds.

Within 72 hours of arrest: Research shows that just a brief stint in jail can severely disrupt a person's life. We, therefore, prioritize posting bail at the earliest possible moment – ideally, before a person is transferred from the police district to jail.

Bail amount below PBF limit: Due to our limited resources, we will only pay bail amounts that are below a certain dollar threshold. This limit is established internally and fluctuates based on funds available at a given time. We have posted bail as low as \$100 and as high as \$7,500 and for 26 different charges.

No detainers: If a client has a detainer set in their case because of a probation violation or an open bench warrant, paying bail will not guarantee release. For this reason, we do not post bail for people who are held with detainers.

How PBF Works



A Long-Term Solution

Our work shows that incarcerating people just because they cannot afford cash bail is unnecessary and destructive. The vast majority of people (90%) we have bailed out to date meet all their court obligations even though they are not at risk of losing their own money to cash bail. Compared to the status quo, we believe our outcomes are just as good, if not better.¹⁹

Moreover, our work shows that Philadelphia's cash bail system completely undermines the important principle of the presumption of innocence before trial. It forces people unable to afford bail to choose between languishing in jail until their case is resolved or pleading guilty, even if they are innocent, in order to obtain a time served or other non-incarceratory sentence and go home immediately. This is an unconscionable choice. Imposing the trauma of incarceration on people who are presumed innocent disrupts their and their families' lives and makes our communities less safe.

Our work also shows that the Philadelphia cash bail system is costly. In our work to date posting bail for 130 indigent people, we have prevented an estimated 15,000 days of pretrial detention at an estimated cost of \$1.5 million in local taxpayer dollars. This is merely a drop in the bucket when viewed against the system as a whole. In 2019, to date, over 17,100 people have been assigned cash bail and the vast majority of these people have been assigned public counsel due to a determination of indigence.²⁰ Instead of spending millions to jail poor people pre-trial, we should be investing funds into communities most in need.

Not only is Philadelphia's cash bail system morally abhorrent and counterproductive public policy, it is also unconstitutional. It violates the constitution, and basic principles of fairness, to put anyone in a cage/jail cell solely because of their poverty. And it is especially unforgivable in the pretrial context, where the person is presumed innocent and has not been convicted of a crime.

We urge Philadelphia policymakers to stop jailing people simply because they cannot afford to pay for their freedom. The District Attorney's Office and magistrates should end the current practice of requesting and assigning cash bail to those who cannot afford it. The current system holds hostage the freedom of people living in poverty as they await trial. It makes a mockery of the principle of equal justice and equal treatment for all.

19. Philadelphia failure to appear rates are not published.

20. This figure includes nearly 3,600 cases of "unknown bail - "a categorization of bail amount for cases for which we do not have sufficient bail data," according to the District Attorney's Office.

Policymakers can change this practice today. No changes to state law are required. In fact, the opposite is true. Current cash bail practices are not in compliance with Pennsylvania law, which states that:

- Cash bail should not be issued at levels which are unaffordable; and
- Magistrates should issue the minimal necessary terms of release required in order to ensure court appearance.²¹

Philadelphia’s cash bail system is not working. We urge Philadelphia policymakers to follow the constitution and implement a fairer, more effective system based on the presumption of release before trial for the overwhelming majority of individuals arrested.

In exceptional cases where the District Attorney’s Office (DAO) believes a person poses a specific, articulable, and unmanageable risk of flight, or risk to public safety, the DAO should file a motion to detain and request a prompt detention hearing. Our position is that detention is only proper through a process which complies with constitutional safeguards, including a prompt, full adversarial hearing before a judge where an arrestee is represented by legal counsel and has the ability to present evidence. There, a judge must find on the record, by clear and convincing evidence, that detention is the only means of addressing risk. To date, Philadelphia has not come anywhere close to meeting that high standard and instead relies on wealth as the measuring stick of who is jailed and who is set free pending trial.

Our work demonstrates that with text reminders for court dates and some support – and in most cases, no support at all – the overwhelming majority of people will meet all their court obligations. Philadelphia’s current bail system is unnecessary, unconstitutional, and continues to have a devastating impact on the lives of some of the most vulnerable people in our city. It must stop.

21. Pa. Const. Art. 1 § 13; 234 PA. Code Rule 524.

