

# Middlesex County Bail Report

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Developed by:  
Jack McDevitt, Ph.D  
Megan Denver, Ph.D  
Nathaniel Lawshe, M.A.

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## **Preface**

This report is the result of a partnership between the Middlesex County District Attorney's Office (MCDA) the the Institute on Race and Justice (IRJ) at Northeastern University. The partnership was initiated by the District Attorney Marian Ryan who reached out to the IRJ asking if we could review her data on cases prosecuted by her office in conjunction with her staff, in an effort to share some of this information with the public. As an illustration of the possibilities of this partnership we choose to review a bail reform initiative established by the MCDA office which is described below. This report is intended to be an illustration of how this partnership might work to describe initiatives by the MCDA. The report is descriptive in nature as additional variables would needed to fully address all the research questions posed by such a reform effort.

## **Introduction**

Criminal Justice reform in the United States is an ongoing effort. Reforms are occurring in all components of the criminal justice system: in law enforcement, in the courtrooms, and in the prisons. It was estimated that by 2018 that approximately 32 states have implemented initiatives that were intended to reduced both arrests and imprisonment rates (Bragg, 2018). For example, in 2017 the State of New York passed the Criminal Justice Reform Act under the tagline, "creating a stronger, fairer and more just system for all." This bill addresses long wait times for trials, raised the age of criminal responsibility, and provides an effort to reform the bail system. In 2018, the First Step Act was passed by the Congress of the United States with bipartisan support. This law gave more discretion to judges in sentencing, softened the impact of

the “three strikes” policy, and increased federal spending to the benefit of the prison population for job training and education, among other federal reforms.

Efforts are also being made to reduce the number of individuals serving time in prison at the state level. One promising prison reform addresses pre-trial detention. According to the Vera Institute, there was a 433% national increase in pre-trial detentions from 1970 to 2015 due in part to the use of cash bail. This presents a problem because research indicates that those under pre-trial detention are more likely to be convicted and receive lengthier sentences compared to those who are free before trial (Digard & Swavola, 2019). They also report that in 2016, the estimated U.S. national local jail population was over 740,000 with two-thirds of that population not being convicted of crime – but instead waiting to go to court. Because bail is often assessed without consideration of a person’s ability to pay, those without economic resources often cannot post bail and are therefore unable to leave the local jail and assist in the preparation of their defense. In this way, cash bail may punish those who are economically disadvantaged (Stevenson, 2018). Cash bail also has been shown to differentially impact people of color, who are held at higher rates without bail and when bail is assessed it is typically higher than whites (Demuth, 2003; Schlesinger, 2005).

Due to the problems that pre-trial detention causes, a number of efforts to change bail laws have been implemented. For example, effective January 2020, the state of New York implemented a sweeping change to bail. One key aspect mandates that in misdemeanor cases a judge cannot set cash bail and must either release the subject or set nonmonetary conditions for release unless the offense is sex-related. Another aspect of the reform effort mandates that when judges set bail, they must consider the financial hardship that the subject would experience if

imposed. The Vera Institute estimates a 40% drop in New York's pre-trial detention population if the law is implemented effectively.

The current initiative implemented in Middlesex County involves the elimination of cash bail for many low-level offenses. This approach is designed to maximize the number of defendants who are released before trial, allowing these defendants to assist in the defense of their cases. Releasing defendants before trial also allows these presumptively innocent people to keep maintain housing and remain employed pending trial. This policy was designed to particularly benefit poor and minority defendants.

The Middlesex County District Attorney's Office provided data to the Institute on Race and Justice at Northeastern University on completed arraignments in district courts in Middlesex County in which bail was considered assessed from January 1<sup>st</sup>, 2019 to September 30<sup>th</sup>, 2019<sup>1</sup>. There were 10,759 cases arraigned during this period<sup>2</sup>. The information provided to Northeastern included the date and charge at arraignment, the bail recommended, the bail imposed (if applicable), the district court involved in the bail decision, and individual characteristics of those charged, such as race and ethnicity. The goal of the current report is to present descriptive statistics on select characteristics related to bail.

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<sup>1</sup> The database maintained by Middlesex County District Attorney's Office is continuously updated. Therefore, in any future replications of the analysis performed here, the data may be slightly different, but should not result in significant departures from conclusions reached in this report. The information in this report reflects the data in Middlesex County's case management system as of the end of business on June 24<sup>th</sup>, 2020. Cases that were resolved at the first court appearance without the imposition of any bail were not included. Additionally, cases where the defendant was held without bail at arraignment pursuant to 58A, held on a fugitive charge, or held on a murder charge were excluded from the analysis as these defendants are not generally eligible for bail.

<sup>2</sup> 10,759 refers to the number of cases, not individuals. Defendants involved in these cases may appear in this data multiple times.

## **Bail Imposed**

The extent of implementation of criminal justice reforms is a key aspect in the consideration of program effectiveness. Once initiatives are passed or otherwise promulgated, are they in fact implemented as intended? Criminal justice institutions have been notoriously difficult to reform. Some have suggested reform in the criminal justice system is tantamount to “bending granite” (Hamm, 1990).

While we are limited in what we can describe from the pre-implementation period since data systems in Middlesex County were updated around the same time as the bail reform policy was implemented, it is useful to note that, out of cases in which bail was addressed at arraignment, a specific amount of bail was imposed at arraignment in only 16.43% (1,768) of district court cases arraigned in Middlesex County during the period under review. In other words, in 83.57% (8,991) of cases no bail was imposed at arraignment. That means that the vast majority of defendants in Middlesex County were able to live at home and assist in their defense in the period between arrest and trial<sup>3</sup>.

Working closely with the Middlesex County District Attorney office, The staff from the Institute on Race and Justice were able to measure the actual pool of persons charged that were offered bail and the number of those individuals who were not able to meet the bail requirement and were held awaiting trial. In Massachusetts as in many other states, some persons arraigned are not eligible for bail. In the data from Middlesex County 23% of the cases are dismissed prior to arraignment and thus no bail is considered by the court. Another 32% of the cases are disposed of at arraignment so again no bail is necessary. Additionally, 52% of the cases were released on personal recognizance. Furthermore in Massachusetts certain cases are not entitled to bail

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<sup>3</sup> The 85% described here does not reflect individuals subject to a 58A hearing or a motion to revoke.

including those charged with homicide those deemed a fugitive from justice and those held as a result of a dangerousness hearing often referred to as a 58A. This leaves approximately 10% of the cases where the defendant is eligible for bail.

Table 1 Bail Eligibility at Arrangement

Dismissed Prior to Arrangement	398	2.3%
DISPOSED AT ARRAIGNMENT	5561	32.1%
NO CASH BAIL & NOT HWOB	9024	52.1%
IMPOSED SPECIFIC BAIL AMOUNT AT ARR	1816	10.5%
Held without Bail (HWOB) (58A)	435	2.5%
HWOB (Fugitive From Justice)	83	0.5%
HWOB (MURDER)	2	0.01%
Grand Total	17,319	100%

Data obtained from the Middlesex District Attorney's office indicates that the percentage of defendants unable to post the bail imposed by the court is quite small. On average, defendants

failed to post the bail imposed at arraignment in Middlesex County in only 1.70 % of cases.<sup>4</sup> The percentage of defendants ultimately held on bail would even be smaller than this low number, if cases resolved at arraignment were included in the figures.

These statistics can be compared to a Bureau of Justice Statistics report of felony defendants in state courts in the 75 largest counties where 24% of the cases were released on personal recognizance or unsecured bond (Cohen and Reaves, 2007). In a more recent study in Connecticut, of all custodial arrests that went to arraignment 30% of the defendants were released without any financial obligation (Conn. Sentencing Commission, 2017). These results indicate that defendants in Middlesex County are much more likely to be able to remain in the community while they await their trial.

### **Bail Imposed by Race**

Existing empirical evidence indicates racial disparities exist in pre-trial decisions. A few studies find that there are racial and ethnic disparities in bail decision-making among those charged with violent crimes and pre-trial release decisions, such as being released on personal recognizance (Demuth, 2003; Freiburger, Marcum, & Pierce, 2010; Schlesinger, 2005). One study found that the effect of race on pre-trial release was attenuated when economic factors were controlled for (Freiburger & Hilinski, 2010). Overall though, ethnic and racial disparities appear to be present within pre-trial detention decisions.

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<sup>4</sup> This data encompasses all open Middlesex County district court cases on the first day of each month over a seven month period. In addition to including the number of open district court cases on each of the seven dates, this data includes the percentage of cases on each date where a defendant being held in jail (Billerica House of Correction or MCI Framingham) had not yet posted bail imposed at arraignment. The total number of cases open on each date does not include cases that were resolved on that date at the first court appearance without bail being imposed. The total number of cases open on each date does include cases where the defendant was held without bail at arraignment under 58A, a fugitive charge, or a murder charge. However, cases where the defendant is held without bail at arraignment for these reasons are not considered cases where the defendant failed to post bail imposed at arraignment for purposes of this analysis. This information reflects the data in Middlesex County's case management system as of the end of business on June 24th, 2020.

When we look at the defendants who received bail by race in Middlesex County, we do not see major differences across the county in the proportion of African American, white, Latino, or Asian defendants in which bail was imposed (see Table 2). Across Middlesex County, among the district court cases that were arraigned, 20% of Latino defendants, 19% of African American defendants, 15% of Asian defendants, and 15% of white defendants received some form of financial bail. At a descriptive level, it seems that the reform effort initiated by the Middlesex County District Attorney has been implemented relatively similarly across racial and ethnic groups. It is true however that Latino defendants and African Americans were more likely to have bail requested compared to white defendants (20%, 19% vs. 15%). All racial ethnic or gender disparities should be monitored going forward with a larger sample of cases and analyzed in a multivariate context controlling on severity of offense and prior criminal record as well as other variables to identify and understand these disparities and suggest ways to reduce them.

**Table 2: Cases in Which Bail was Addressed at Arraignment by Race/Ethnicity**

<b>Bail Imposed</b>	<b>African-American</b>	<b>White</b>	<b>Latino<sup>5</sup></b>	<b>Asian</b>	<b>Other Race/Ethnicity</b>	<b>Not Provided</b>	<b>Total</b>
No Bail Imposed (=0)	81.29 %	84.93 %	80.03 %	84.82 %	95.24%	88.38 %	83.57 %
1-500	10.28 %	9.26 %	10.06 %	5.94 %	4.76%	5.81 %	9.34 %
501-2500	5.08 %	4.33 %	6.16 %	7.26 %	0.00%	1.94 %	4.78 %
2501-10000	2.89 %	1.32 %	2.47 %	1.32 %	0.00%	2.18 %	1.82 %
Greater than 10000	0.46 %	0.16 %	1.28 %	0.66 %	0.00%	1.69 %	0.49 %
<b>Total</b>	<b>1731</b>	<b>6263</b>	<b>2028</b>	<b>303</b>	<b>21</b>	<b>413</b>	<b>10759</b>

<sup>5</sup> For purposes of this table, if an individual involved in a case was identified as Hispanic/Latino ethnicity, it overrode racial categories. It is acknowledged that multiple race/ethnicity categories exist (African American Hispanic, White Hispanic, etc.).

### Bail Imposed by Case Type

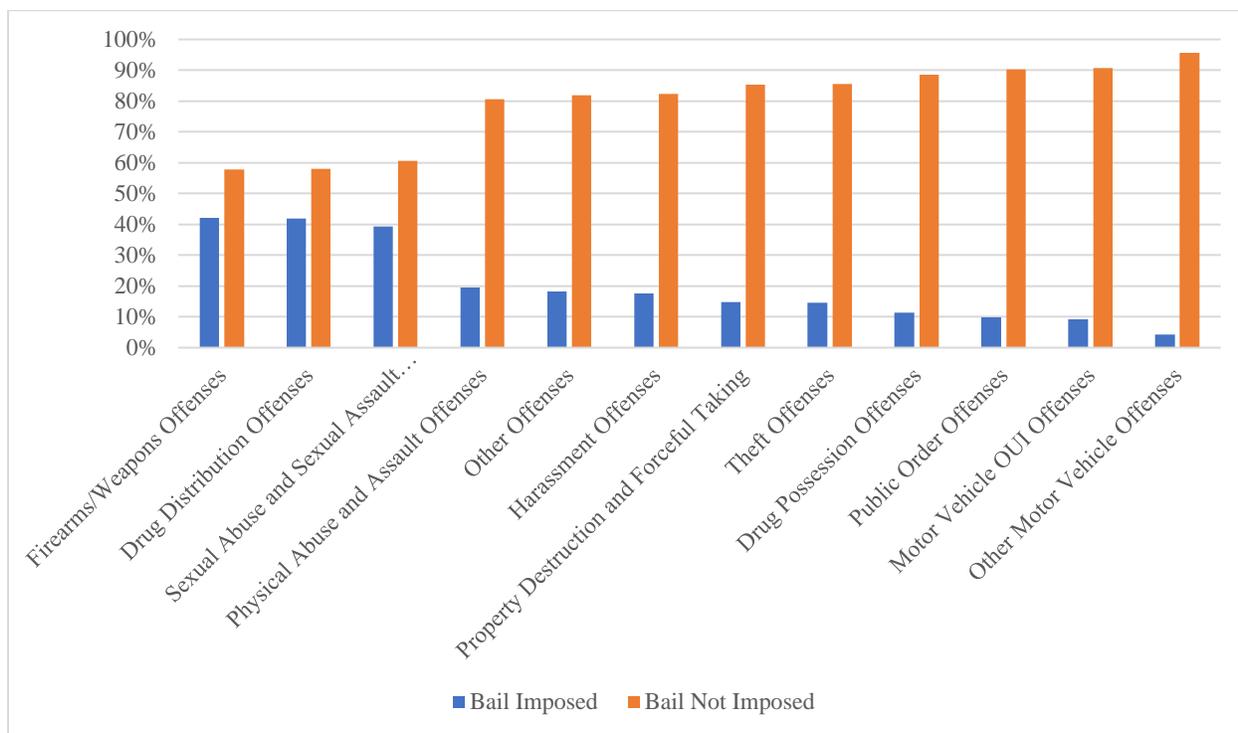
The literature on bail reform stresses that many disadvantaged groups are held in custody pending trial for low level offenses (Demuth, 2003; Freiburger, Marcum, & Pierce, 2010; Schlesinger, 2005). This does not appear a common occurrence in Middlesex County. The individuals who are held while awaiting trial are most likely to have been charged with more serious crimes (see Table 3 and Figure 1).

In Middlesex County, bail is most likely to be requested in cases involving defendants charged with firearm offenses or sexual abuse and assault offenses. In 50 % of cases involving defendants charged with firearm offenses, bail was imposed at arraignment. In 47.56 % of cases involving defendants charged with sexual abuse and sexual assault charges, bail was imposed at arraignment.

**Table 3: Bail Imposed by Case Type**

Case Type	Bail Imposed	Bail Not Imposed
Firearms/Weapons Offenses	50.00 %	50.00 %
Drug Distribution Offenses	43.47 %	56.53 %
Sexual Abuse and Sexual Assault Offenses	47.56 %	52.44 %
Physical Abuse and Assault Offenses	21.09 %	78.91 %
Other Offenses	36.36 %	63.64 %
Harassment Offenses	19.61 %	80.39 %
Property Destruction and Forceful Taking	16.56 %	83.44 %
Theft Offenses	14.70 %	85.30 %
Drug Possession Offenses	11.36 %	88.64 %
Public Order Offenses	10.19 %	89.81 %
Motor Vehicle: OUI and Serious Bodily Injury	9.27 %	90.73 %
Other Motor Vehicle Offenses	4.39 %	95.61 %

**Figure 1: Bail Imposed by Case Type**



**Bail Imposed by Court**

When examining the proportion of cases where bail was imposed at arraignment by the various District Courts in Middlesex County, there is some variability<sup>6</sup>. In Framingham District Court, bail was imposed at arraignment in 24% of cases.<sup>7</sup> In Woburn District Court bail was imposed at arraignment in 20% of cases. On the other extreme, bail was imposed at arraignment

<sup>6</sup> Please see the Appendix for information on bail imposed by court.

<sup>7</sup> Once again, cases that were resolved at the first court appearance without the imposition of any bail are not included. Additionally, cases where the defendant was held without bail at arraignment pursuant to 58A, held on a fugitive charge, or held on a murder charge are excluded from the analysis as these defendants are not generally eligible for bail.

in only 10% of the cases in Somerville District Court. 12% of the cases in Newton District Court and 12% of the cases in Concord District Court. The reason for this variation is subject to further analysis as it might involve variation in the type of cases or the prior criminal history of defendants seen in each court. One conclusion from this data is that the Cash Bail Reform efforts put in place by the Middlesex County District Attorney seems to have been implemented similarly across all the District Courts of Middlesex County.

Cambridge	Number of Cases	Percent
Bail Not Imposed (Equal to Zero)	775	84.61 %
Bail Imposed is Greater than Zero	141	15.39 %
Total	916	

Ayer	Number of Cases	Percent
Bail Not Imposed (Equal to Zero)	480	84.81%
Bail Imposed is Greater than Zero	86	15.19%
Total	566	

Concord	Number of Cases	Percent
Bail Not Imposed (Equal to Zero)	432	87.98 %
Bail Imposed is Greater than Zero	59	12.02 %
Total	491	

Framingham	Number of Cases	Percent
Bail Not Imposed (Equal to Zero)	751	76.24 %
Bail Imposed is Greater than Zero	234	23.76 %
Total	985	

Lowell	Number of Cases	Percent
Bail Not Imposed (Equal to Zero)	2402	83.58 %
Bail Imposed is Greater than Zero	472	16.42 %

Total	2874
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Malden	Number of Cases	Percent
Bail Not Imposed (Equal to Zero)	1057	83.16 %
Bail Imposed is Greater than Zero	214	16.84 %
Total	1271	

Marlborough	Number of Cases	Percent
Bail Not Imposed (Equal to Zero)	472	82.66 %
Bail Imposed is Greater than Zero	99	17.34 %
Total	571	

Natick	Number of Cases	Percent
Bail Not Imposed (Equal to Zero)	150	83.33 %
Bail Imposed is Greater than Zero	30	16.67 %
Total	180	

Newton	Number of Cases	Percent
Bail Not Imposed (Equal to Zero)	229	88.08 %
Bail Imposed is Greater than Zero	31	11.92 %
Total	260	

Somerville	Number of Cases	Percent
Bail Not Imposed (Equal to Zero)	816	89.57 %
Bail Imposed is Greater than Zero	95	10.43 %
Total	911	

Waltham	Number of Cases	Percent
Bail Not Imposed (Equal to Zero)	648	85.94 %
Bail Imposed is Greater than Zero	106	14.06 %
Total	754	

Woburn	Number of Cases	Percent
Bail Not Imposed (Equal to Zero)	779	79.49 %
Bail Imposed is Greater than Zero	201	20.51 %
Total	980	

**Conclusion**

This report, developed from a partnership between Northeastern University’s Institute on Race and Justice and the Middlesex County District Attorney’s Office, illustrates how such partnerships can advance the public understanding of the functioning of a District Attorney’s office and can serve as a demonstration to other prosecutors’ offices of how prosecutor academic partnerships can provide benefits to each side as well as the broader community. The next steps in answering the research questions about the impact of the MCDA bail reform efforts would necessitate supplementing the data provided by the MCDA with additional data on those defendants subject to bail over the period of the study. The additional data that would be necessary to fully answer the Bail Reform research questions would include information on the criminal record of each defendant, information on the community ties for each defendant and information on the employment history of each defendant. One challenge of supplementing the data is that the information necessary to supplement the MCDA data would have to come from different sources including the Massachusetts Criminal Records Systems Board and the Bureau of Labor Statistics. In conjunction with the MCDA, staff from IRJ will be seeking support to supplement the existing MCDA database as indicated above. However, we believe that partnerships between district attorneys offices and academic institutions can help to understand disparities in treatment and support criminal justice reforms.

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## Appendix

**Table 3: Race/Ethnicity Crosstab**

	Hispanic/Latino	Non-Hispanic/Non-Latino	Not Provided	Total
American Indian/Alaskan Native	2	10	7	19
Asian	2	155	148	305
African American	129	1114	617	1860
Native Hawaiian/Pacific Islander	1	4	0	5
Not Provided	882	39	374	1295
White	1,012	3713	2550	7275
Total	2028	5035	3696	10759

Note: This crosstab does not include 5 cases that were missing ethnicity information and 1 case (for a total of 6 cases) that was missing both race and ethnicity information.