

Prince George's County Courtwatch, A Project of Life After Release
4710 Auth Place
Camp Springs, MD 20746

Chief Judge Barbera, Chief Judge Morrissey & Administrative Judge Hall-Johnson
Prince George's County Circuit Court and District Court
14735 Main St
Upper Marlboro, MD 20772

December 23, 2020

Dear Chief Judge Barbera, Chief Judge Morrissey & Administrative Judge Hall-Johnson:

We write to you as community court-watchers who have regularly watched and documented Prince George's County District Court bond review hearings for the past year.

In the period between July 2nd and November 13th, we observed over 1,500 individual bond hearings. Despite the urgent need to reduce the jail population in the midst of the COVID-19 pandemic, we have continued to see, with alarming regularity, cases in which individuals are detained pretrial for non-violent offenses within the Prince George's County jail. These cases include people detained on non-violent allegations of gun possession, theft, motor vehicle theft, probation violations, trespassing, drug possession and destruction of property. We have also continued to see medically vulnerable and immunocompromised people detained pretrial, as well as single parents and heads of households, who are needed at home now more than ever.

After examining hundreds of cases, it is clear that several main issues have continued to cause dangerous growth in the jail population over the past 6 months.

Our concerns

On November 25th, State Attorney Aisha Braveboy [released a press statement](#) declaring that over 97% of people currently incarcerated at the Prince George's County Department of Corrections (PGDOC) are being detained on violent offenses. Her statement is objectively false, and a misleading attempt to dehumanize the people currently detained at the jail. We respectfully request judicial intervention to immediately review the cases of everyone held at PGDOC as Judge Barbera did at the beginning of the COVID-19 pandemic.

In response to the skyrocketing jail numbers in the wake of the COVID-19 crisis, Ms. Braveboy's office has continued to request that District Court judges detain Prince Georgians accused — but not convicted — of criminalized behavior, instead of renewing efforts to significantly reduce the jail population. And District Court judges have largely followed the State's recommendations. As a result, the PGDOC population is now approaching 800, which is well above the population at the start of the pandemic. By

the jail's own admission, PGDOC is overcrowded and cannot allow for social distancing unless its population decreases to 400-450 people.

Judicial intervention is immediately necessary to review and prioritize the release of: immunocompromised people; elders over 60; those ordered or eligible for pretrial release; and single parents and heads of households.

How did we get back here?

On April 14, 2020, Chief Judge Barbera ordered the Judges of both the Circuit and District Courts to identify at-risk incarcerated persons for potential release. These measures were necessary not only to protect the health of those detained pretrial in the midst of the pandemic, but everyone involved in and employed by the judicial system. Although there were some initial declines in the average daily population at PGDOC, as of December 18, 2020, there were 782 people being detained in a facility that can safely accommodate only 400-450 people.

One major factor underlying the rising population at PGDOC is that Ms. Braveboy's Assistant State Attorneys have continued to request detention without bond in approximately one-third of all of the cases brought before the District Court for bail review hearings (Figure 1). In addition, Ms. Braveboy's ASAs categorical opposition to monetary bonds has perversely resulted in her prosecutors, rather than advocating for release without monetary conditions, merely saying "I cannot and will not recommend a monetary bond." In turn, we have witnessed District Court judges detaining individuals in almost 30% of all of the cases brought before them between July 2 – November 13, 2020 (Figure 2). Further exacerbating the issue, we have witnessed on numerous occasions that even when a prosecutor recommends less restrictive conditions of release (for example, unsecured bonds, personal recognizance, pretrial options, and other conditions), District Court judges will nonetheless impose more restrictive conditions than requested by the prosecutor or even deny any avenue for release entirely.

While the courts operate in such a limited capacity, the detention of such a large percentage of those who appear in court for bail review hearings has clearly and rapidly increased the population within PGDOC. We believe it is unjust and inhumane to detain hundreds of people who have yet to be convicted of a crime in an overcrowded and unsanitary detention facility in the midst of a global pandemic.

Another factor now fueling the rising population at PGDOC is the option of Pretrial Services, which too often is a false avenue for release (Figure 2). In theory, judges grant the option of release to Pretrial Services so that an individual may be released to some form of supervision outside of the jail's walls. In practice, however, there is a long queue of people detained at the jail, who've had the option of release to Pretrial Services for weeks if not months, yet remain detained. Many people with the option of Pretrial Services are never released at all, because they do not meet one or more of Pretrial Services' unpublished criteria. For example, because Pretrial Services refuses to supervise people on home monitoring outside of Prince George's County, people who live outside the county often are kept in jail and not released, even though a judge has determined home monitoring is appropriate. Those who are eventually released through Pretrial Services face extreme delays, which keep PGDOC's population high and force individuals to remain within an overcrowded jail during a surging pandemic. Both public defenders and private attorneys often note that it can take weeks for their clients' cases to be reviewed by Pretrial

Services. Even in the rare instance where a judge has *ordered* Pretrial Services to release an individual, rather than merely providing the “option,” people often remain detained in PGDOC for days or weeks. For example, as recently as December 7th, 2020, Judge Katina Steuart ordered 5 people to be released through Pretrial Services at Level 4 (home monitoring). Nine days later, at least two of these individuals are still detained when they are not being held on any other matters³.

Demands

The population inside the PGDOC continues to rise, resulting in more and more people being exposed to an unsanitary, overcrowded, inhumane environment in the midst of the surge in COVID-19 cases around the country. We demand that the Courts take swift and drastic action to review the cases of those detained and decarcerate those who are medically vulnerable including, but not limited to:

- People over the age of 50
 - They are 4x more likely to be hospitalized from COVID-19 than 18-29 year olds and 30x more likely to die from contracting COVID-19¹
- People who are immunocompromised
 - They are especially susceptible to health complications from contracting COVID-19
- People detained on misdemeanor or non-violent offenses
 - As of the morning of December 9th, there were 71 people detained on misdemeanor or non-violent offenses
 - 5 of whom were over the age of 50
 - 2 of whom were being detained in the medical unit
- People detained on probation violations
 - As of the morning of December 9th, there were 12 people detained solely on violations of probation
- People authorized or ordered to be released through Pretrial Services
 - Dozens of people remain detained, although a judge has already deemed them eligible for release or ordered them to be released
- People with jobs on the line, single parents or people who are heads of households
 - The majority of Americans are experiencing difficult financial times in the midst of an extreme recession, and now more than ever cannot risk losing their jobs. Jeopardizing their financial health jeopardizes their families’ health.

Additionally, we demand that the Courts continue this commitment to decarceration moving forward.

Decarceration is essential, for several reasons:

Trials have been suspended indefinitely

The overwhelming majority of people detained at PGDOC are legally innocent, they have not been convicted of any crime, yet they remain detained without any reasonable timeframe for anticipated release. There are people that have been waiting for court hearings for the past year, and trial days are now being set in calendar year 2022. Expeditious trials — the hallmark of a well functioning judiciary

¹ CDC. “COVID-19 (Coronavirus Disease): Hospitalization and Death by Age.” 2020. Centers for Disease Control and Prevention, August 18, 2020.
<https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-age.html>.

system and a Constitutional right — have been suspended indefinitely since March, causing a tremendous backlog of cases where the defendant may be acquitted.

Social distancing is impossible at PGDOC — and it's getting worse

By the jail's own admission, the current population of those incarcerated is drastically over capacity. The PGDOC jail population has increased 40% since its record low in May.

Since the beginning of the COVID-19 pandemic, we have watched as people incarcerated at the PGDOC are detained in small cells, often with another person, for 23 hours per day. This makes social distancing impossible, both inside of the cells and during the daily hour of "recreation" time.

Prince George's County Correctional Center still does not have adequate cleaning and sanitation supplies

People detained at the PGDOC do not have adequate cleaning and sanitation supplies. In our most recent conversations with those incarcerated in PGDOC, we have learned that people are given only 1 small piece of soap to last them a month, clothes and bedding are not being adequately or frequently washed, cells are not being cleaned consistently, and blood, spit, urine and fecal matter are commonly found in shared and public spaces.

Incarcerated people are effectively being held in solitary confinement

An effort to control the spread of COVID-19, jail officials have implemented mass tactics of solitary confinement lockdown of 23 hours a day, with one hour of release time. Such conditions, as reported by the United Nations Special Rapporteur Juan Mendez, constitute torture. In addition, the jail has shrunk meals to smaller portions. We have heard of loved ones being beaten and assaulted by guards as recently as 2 weeks ago and the psychological impact of this 23/1 lockdown has immense psychological impact on everyone incarcerated regardless of their sentence.

The jail's mass use of solitary confinement has neither limited the spread of COVID-19 nor increased standards of sanitation and cleanliness in housing units. To the contrary, it makes people even more desperate to use shared resources -- like newspapers, telephones, showers, in the precious one hour they have. This all but guarantees social distancing cannot be observed.

Contextual analysis and recommendations

By failing to decarcerate, the Courts are putting all Prince Georgians and Marylanders at risk. In furtherance of our demand to decarcerate, we provide the following factual analysis and recommendations:

In her November press statement, Ms. Braveboy published misleading statistics and graphics on the nature of the offenses for which people are being detained at PGDOC. She claimed that nearly 97% of the 760+ people detained at the jail at that time were detained for violent offenses, while the other 3% were being detained for other serious offenses.² Here is the reality:

² Braveboy, Aisha. 2020. "PGSAO Monthly Report (Operation Safe Release)". Office of the State's Attorney for Prince George's County, MD. November 2020.

- Even by her own admission, as of November 13th, 2020, there were 62 people detained on firearm or gun related charges. Although her office has tried to label these people as violent, many of these individuals have not been alleged to have committed any act of violence. Rather, they are simply charged with possession of a firearm, an offense historically weaponized against Black and Brown communities..
- The aforementioned press release also states that on November 13th, there were 30 people being detained for a probation violation or a violation of a protective order. These cases are neither inherently violent nor inherently indicative of someone being a danger to the Prince George's County community. Both relatively minor technical violations such as showing up late to an appointment with a probation officer or arrests for petty misdemeanors such as trespassing can result in probation violations.
- The press release lists another 9 people detained for possession with intent to distribute a controlled substance. These charges are inherently non-violent. Detaining people alleged of possessing a drug with the intent of distributing effectively continues the War on Drugs, which has devastated Black and Brown communities.
- The press release also lists 5 people detained for manslaughter charges. As manslaughter charges are by definition accidental killings, individuals who are alleged of committing manslaughter should not be considered inherently dangerous to the Prince George's County Community.
- Another group of individuals frequently detained without bond at PGDOC, and listed in the press release, are those with fugitive warrants. As of November 13th, 4 people were detained on fugitive warrants. Missing a court date in another jurisdiction does not make someone inherently dangerous, especially as people with fugitive warrants are often charged with relatively minor offenses, such as traffic offenses or even trespassing charges. Detaining people on fugitive warrants, rather than allowing them to turn themselves in, is particularly troubling given the high rate of turn-over and high likelihood of transportation in conditions that endanger those detained and further the spread of COVID-19 throughout the country.

Similar, but not mentioned in State Attorney Braveboy's press release, are individuals detained without bond at PGDOC for out-of-county cases. If an out-of-county judge issued a warrant, both the prosecutors and judges in Upper Marlboro tend to recommend and rule to deny them bond until they are transferred to the other county. The current protocol at PGDOC is to detain someone for 14 days so they can "quarantine", until they are transferred to the other county, where their case is not guaranteed to be immediately heard. This results in people being unnecessarily detained for longer amounts of time at an overcrowded and inhumane detention facility in the midst of a raging pandemic, often on very minor non-violent charges. It is appalling that District Court judges continue to deny such individuals conditions of release. Just this past Monday (December 14) court-watchers witnessed Judge Stacey Maria Cobb Smith rule to detain an individual without bond until transferred to Montgomery County, even though his only active case involved an alleged theft of \$25.

Another category of offenses misleadingly categorized by State Attorney Braveboy's press release include contempt charges. People most often detained for contempt are detained based on failure to pay child support, although these individuals may be unable to pay court-ordered child support. Particularly now, in the midst of a pandemic when our country's government has failed to support the millions of Americans struggling with financial hardships, detaining someone without bond on a contempt charge is inherently unjust. It has the effect of turning PGDOC into a debtor's prison. And certainly, those individuals do not pose a danger to Prince Georgian's by virtue of their financial hardships.

State Attorney Braveboy's November press release also mentions 9 people who were detained on motor vehicle theft charges, 3 people who were detained on theft scheme charges, 1 person detained on disorderly conduct charges, 1 person detained on traffic matters, 2 people detained on indecent exposure charges, 3 people detained on trespass charges, 1 person detained on false statement charges, 2 people detained on malicious destruction of property charges, 2 people detained on rogue and vagabond charges, 1 person detained for failure to pay child support, and 2 people detained on telephone misuse charges. Ms. Braveboy's characterization of these charges as "violent" or "serious" such that they merit detention in an overcrowded and inhumane detention facility in the midst of a pandemic defies logic. Each of these charges is inherently non-violent in nature.

In total, Ms. Braveboy's November press release indicates that, as of November 13, there were 151 people detained on nonviolent offenses. The overwhelming majority of these individuals have not been convicted of a crime and should be treated as innocent until proven guilty.

As courtwatchers, we have witnessed both judges and prosecutors in Upper Marlboro District Court falsely characterize individuals charged with the above offenses as violent, often ruling to deny them bond and conditions of release. Some of these individuals are granted monetary bonds, but then remain detained because they cannot afford to purchase their freedom. As a result, many people are inappropriately detained for weeks or months. There simply is no way to justify detaining people on these kinds of offenses in an overcrowded and dirty jail during a raging pandemic.

As a result, we recommend releasing people who fall into the following categories, and a review of everyone incarcerated pretrial to determine their eligibility for release.

- People over the age of 50
 - They are 4x more likely to be hospitalized from COVID-19 than 18-29 year olds and 30x more likely to die from contracting COVID-19³
- People who are immunocompromised
 - They are especially susceptible to health complications from contracting COVID-19
- People detained on misdemeanor or non-violent offenses
 - As of the morning of December 9th, there were 71 people detained on misdemeanor or non-violent offenses
 - 5 of whom were over the age of 50

³ CDC. "COVID-19 (Coronavirus Disease): Hospitalization and Death by Age." 2020. Centers for Disease Control and Prevention, August 18, 2020.
<https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-age.html>.

- 2 of whom were being detained in the medical unit
- People detained on probation violations
 - As of the morning of December 9th, there were 12 people detained solely on violations of probation
- People authorized or ordered to be released through Pretrial Services
 - Dozens of people remain detained, although a judge has already deemed them eligible for release or ordered them to be released
- People with jobs on the line, single parents or people who are heads of households
 - The majority of Americans are experiencing difficult financial times in the midst of an extreme recession, and now more than ever cannot risk losing their jobs. Jeopardizing their financial health jeopardizes their families' health.

These people are eligible for release under the State's own guidelines for releasing people, either because of the nature of their charges, because they were authorized for release through Pretrial Services, because of their age, because they are immunocompromised, or some combination of these factors.

We recommend that the District Court and Circuit Court judges carefully review the cases of everyone held at PGDOC. People should not be detained without bond in a dirty and overcrowded jail on misdemeanor or non-violent offenses, if they are elderly, seriously immunocompromised, eligible or ordered for pretrial release.

Although we have highlighted individuals who are being detained even though they meet the State's criteria for release, we want to stress that it is essential that the District and Circuit Court judges review the cases of everyone detained at PGDOC and release as many people as possible.

It is essential that the cases of everyone detained at PGDOC be reviewed because even those detained on "violent" charges can often be released under the appropriate conditions. The prosecutors and the judges that preside over District Court hearings often deny conditions of release to people charged with a variety of offenses, even when it is clear that there are conditions of release that would provide for the safety of the alleged victim(s) and/or the community.

These cases include second degree misdemeanor assault cases. These cases can include a wide variety of alleged altercations, varying in severity. Over the past year, we as court-watchers have witnessed many cases where defendants charged with second degree assault and alleged victims live (or can live) at different addresses, and alleged victims have called into the bail review hearing affirming that they would not be in fear if the defendants detained at PGDOC were to be released. Despite these factors, Assistant State Attorneys and District Court judges often recommend and rule to detain people without bond or merely grant them the pretrial option. This can have enormous consequences on the lives of the people detained pretrial and their families. Detaining people who are their household's primary income earners results in job loss, financial hardship for their families, and difficulties supporting minor children (not only do they have less disposable income, but other family members may have to pick up extra jobs and thus be able to offer less support to children). There are several cases where individuals are currently being detained at PGDOC pretrial for weeks (or longer) when the alleged victim has affirmed that they

would not be in fear if the individuals were released, and the defendant has an address where they can reside in a home separate from that of the alleged victim.

An issue that significantly overlaps second degree assault cases are civilian charged complaints, where allegations are not investigated by the police or State's Attorney's Office prior to arrest. Prince George's civilian complaint system allows private citizens to file criminal charges against other individuals through the District Court Commissioner's Office and request a warrant. As a result, when someone is detained on these civilian complaint warrants, they are often only detained on entirely unsubstantiated allegations that have not been thoroughly investigated, or even investigated at all. We have observed that even when Assistant State's Attorney's and judges have noted inconsistencies in civilian charged complaint cases, they still recommended and ruled to deny people forms of release. In one such civilian complaint case, an individual with no violent history whatsoever has been detained without bond since mid-November on uncorroborated allegations, losing his job, his apartment, and his ability to take care of his infant child. In many instances such as this one, there is no indication that release with a stay-away and no-contact order could not adequately provide for the safety of complaining witnesses and community.

Relatedly, many of the cases tried in District Court are not viable, and the charges later end up being dropped by the Office of the State Attorney. But judges detain people even when the State has taken no action to investigate its case. In such cases where people are denied conditions of release, this means that they spend days, weeks, or even months detained at PGDOC, before their charges are ultimately dropped. Even though these individuals are never convicted of any crime, they are punished with the loss of jobs, housing, and many other collateral consequences of their pretrial incarceration. Reviewing the cases of everyone detained at PGDOC could save people currently detained from unnecessary detention within an overcrowded jail facility in the midst of a pandemic. District Court judges should refuse to detain individuals in cases where the State's Attorney's Office does not show that it has investigated, substantiated, and intends to prosecute the case.

Even withstanding a global pandemic, Prince George's County can safely release far more people detained awaiting trial at PGDOC. The data from nearby Washington, D.C. confirms this. In Washington, D.C. during Fiscal Year 2019, 94% of all people charged with a crime were released pretrial without financial conditions.⁴ This meant that 98% of all people charged with misdemeanor offenses and 75% of all people charged with felony offenses were released pretrial.

We also recommend that judges move to *order* pretrial release instead of only offering the option, as Pretrial Services can take weeks to review the cases of individuals with the option of release, and often decides not to release people at all, although these individuals are legally innocent and have been deemed eligible for release. There are currently dozens of people who have been detained at PGDOC for weeks or more, awaiting their case to be processed by Pretrial Services, even though they have been deemed eligible for release. This places these individuals at risk, as they are in an overcrowded and dirty jail, with no social distancing whatsoever. Additionally, the more time individuals spend detained before they are released, the greater the risk they have of contracting COVID and spreading it to the community once released. Ordering more people released through Pretrial Services instead of merely granting them the

⁴ Pretrial Services Agency for the District of Columbia. 2019. *FY 2019 Release Rates for Pretrial Defendants within Washington, DC*. Washington, DC: Pretrial Services Agency for the District of Columbia.

option will both reduce the current population at PGDOC and work to ensure that the population will remain low enough that social distancing will be possible throughout the remainder of the pandemic. In turn, when Pretrial Services is ordered to release someone but does not do so, judges should take appropriate measures to ensure the person is expeditiously and appropriately released.

Conclusion

Coronavirus cases are surging in Prince George's County and around the United States. Over the last week, there were on average over 478 new COVID-19 cases in the county every day.⁵ However, even with initiatives like Operation Safe Release, there are still upwards of 760 people inside the Prince George's County Department of Corrections on a daily basis. The vast majority of people incarcerated in PGDOC have yet to be convicted of a crime and are detained awaiting trial. An average daily population of upwards of 760 people means that the people detained at PGDOC are unable to practice social distancing in a disgusting facility, where people aren't provided soap or clean clothing and are locked into dirty cells for twenty-three hours a day. New people are detained at PGDOC on a daily basis, potentially exposing detainees to the deadly virus.

The average daily population at PGDOC continues to grow, placing both people detained inside PGDOC and the larger Prince George's County community at risk. There are people being held within the facility charged for non-violent offenses, as well as people who are being held who are at serious risk if they contract COVID-19, such as elderly and immunocompromised people. Above all, this is a cruel violation of the basic human rights everyone detained at PGDOC is entitled to. **We are urging the Courts to review the cases of everyone detained at PGDOC, to release as many people detained at the facility as possible, and to order release through Pretrial Services instead of merely granting detainees the option to be released through Pretrial Services.**

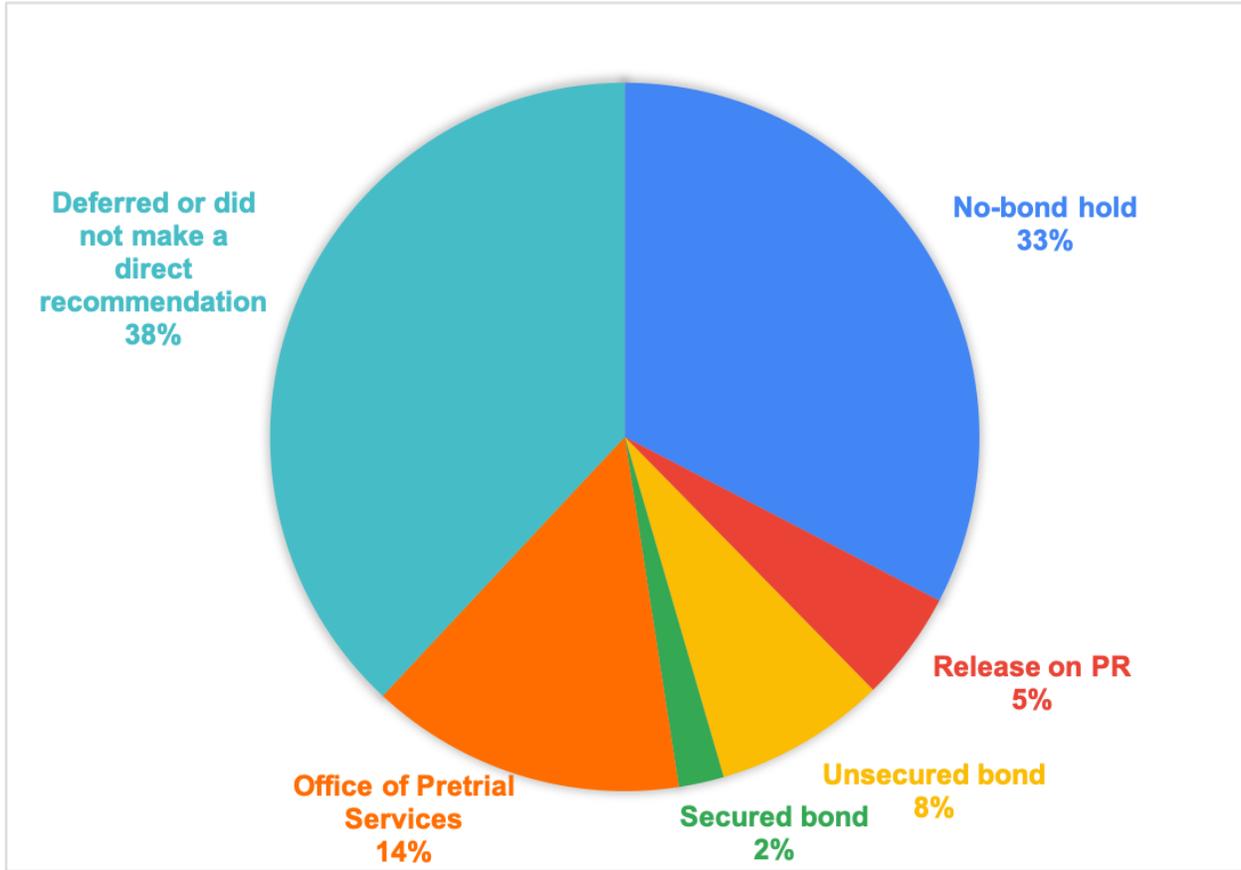
Sincerely,

Prince George's County Court Watch

⁵ The New York Times. 2020. "Maryland Coronavirus Map and Case Count". *The New York Times*. December 16, 2020.

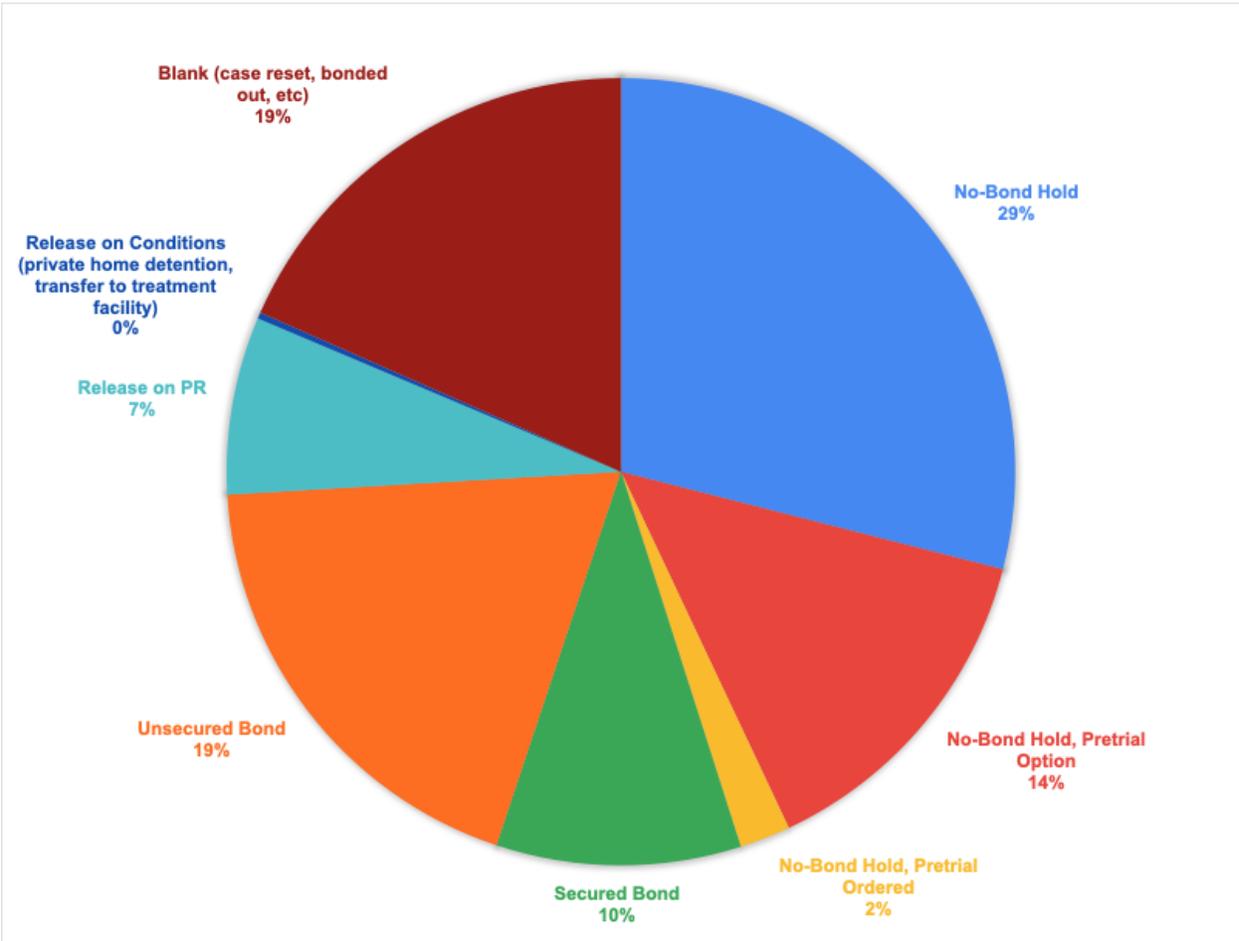
Appendix

Figure 1. Assistant State's Attorney's Recommendations 7/2/20 – 11/13/20



CourtWatch PG bail review data, July 2, 2020 – November 13, 2020.

Figure 2. Bail Review Outcomes 7/2/20 – 11/13/20



CourtWatch PG bail review data, July 2, 2020 – November 13, 2020.