

THE THIRD WEEK

From January 16th to January 22nd, our courtwatchers observed **161** people facing charges at arraignment across three divisions of Boston Municipal Court (BMC Central, Roxbury, and Dorchester).¹

This week, slightly more than **half** of the cases observed (50.9%) involved **only** charges that Suffolk County District Attorney Rachael Rollins has pledged to decline to prosecute, either by dismissing at arraignment or diverting through a non-criminal proceeding, program, or outcome. Again, that means **half** of the cases we observed this week represented crimes that District Attorney Rollins has identified as low-level, non-violent crimes rooted in poverty, mental illness, and addiction.

We want to mention up front that **34.7%** of all 161 cases observed this week were **driving charges**. In other words, 35% of criminal dockets this week in these BMC courts were essentially aggravated traffic court—judges overseeing, and often diverting or dismissing, driving offenses for which folks are still frequently arrested and occasionally held in jail. This concerns us. We hope lawmakers take note.

Our digest again focuses on the data courtwatchers collected about cases that exclusively involved charges from DA Rollins' Decline to Prosecute list.²

An updated note on terms: as we mentioned last week, we are unsure of the Suffolk County District Attorney's Office distinction between diversion and dismissal. In her campaign, Rachael Rollins used both terms. We have asked courtwatchers to try to report case categorizations based on what they observe and hear in court. But, as one of our courtwatchers said this week, "This is confusing - diverted versus dismissed. I never heard 'diverted' this a.m. in BMC but I heard lots of 'dismissed' with the condition of 4 hours community service."

From this point forward we are only going to categorize cases that are **dismissed outright** as **dismissals**. Cases that are **conditionally dismissed** – with court costs, community service hours, or a treatment program – and therefore require a subsequent appearance in court will be considered **diverted** cases. We think this is both more accurate and more useful coding. As addressed in detail below, we are concerned about the impact that imposing conditions which require time, money, or transportation will have on poor and working class people facing charges.

¹ This figure reflects four days of hearings because Monday, January 21st was a court holiday for Martin Luther King, Jr., Day. This week we took special care to remove nine (9) cases from our dataset representing status hearings, restraining orders, or other types of hearings that were not initial arraignments. We again note that the total number of hearings observed is **not** the total number of arraignments which transpired in those courts. For a full count of arraignments, you can view sparse information about all criminal cases, by court and date of filing, at masscourts.org. Select the court, use the “case type” tab, select the relevant date(s), and select both “criminal” and “criminal cross site” as the case type.

² Because of limited capacity of the CourtWatch MA team, we again did not verify every case against the limited available charge information on masscourts.org. We have verified the charge in any case where the courtwatcher left the charge blank, did not hear the charge, or noted that reading the charge was waived in court. It is of course possible courtwatchers misheard the charge(s) in any given case; we reiterate that our data collection is not a substitute for open government and we are very hopeful that District Attorney Rollins will release data tracked by the Suffolk County District Attorney's Office with some regularity going forward.

There were 82 cases involving ONLY charges on the decline to prosecute list this week.

37.8% of these cases (**31** cases) advanced as criminal matters.

33 of these cases were **dismissed** at arraignment.

18 of these cases were **diverted** at arraignment

Therefore, a total of 51 cases, or roughly **62.2%**, were **declined** within the meaning of DA Rollins' campaign pledge.

For the 18 diverted cases, the disposition involved at least one condition, like treatment; a court fee; community service; or probation. In these cases, which ADAs usually refer to in court as conditional dismissals, individuals were required to report back to court on a future date to prove compliance with the condition.

When a person pays a fee to the court or serves community service through the state program administered by the probation department, the court should be able to verify compliance with that condition on its own. Instead, our courts insist that people appear in court again, not only requiring them to take time off work, school, or parenting, or pay for transportation to make it there, but also potentially setting up a new cycle of criminal appearances if for some reason they are unable to appear in court that day.

If a person "fails to appear" in court, that becomes a default on their record. A default on your record can easily become an open warrant; indeed, courtwatchers saw that happen four (4) times this week. Imagine being arrested and held in jail for a weekend because of a \$100 fee the system thinks is unpaid (whether or not you already paid it) because you were in the hospital and therefore missed your last court date to prove compliance. Any new open warrant is just a drop in the bucket among the [390,000 open warrants in Massachusetts](#), but one that can have devastating consequences and can lead to debt-based [jail time](#) for the people caught up.

What gets dismissed?

For the third week in a row, the **vast majority** of dismissals were driving cases – 28 of the 33 cases (84.8%) that were dismissed. The other 5 cases dismissed at arraignment were incidents of: Trespass (**3**); Disorderly Conduct (**1**); and Drug Possession (**1**).

A substantial majority of driving cases (**76.8%**) were declined this week at arraignment.

Driving Charges (56 total)		
Dismissed (without conditions)	28	50%
Diverted (with conditions)	15	26.8%
Released on Personal Recognizance	5	8.9%
Other Outcome (bail set, arraignment continued, held for transport, warrant issued, not resolved before courtwatcher left)	8	14.3%

What gets diverted?

As stated above, this week we categorized any dismissal that included conditions requiring a future court appearance as a diverted case in an effort to more accurately represent the data we collect.

Much like dismissals, the **vast majority** of diversions were driving cases – 15 of the 18 (83.3%) cases diverted this week. For driving cases, judges usually gave the person an option of returning with proof of license/registration/insurance, paying a fee between \$50 and \$150, or completing 4 to 12 hours of community service. The precise outcome depended on the judge.

The other diverted cases were:

Diverted Cases (18 total: 15 driving charges, 3 other)		
Charge(s)	Type of Diversion	Outcome
Trespass & Disorderly Conduct	Community Service	4 hours
Threat to Commit a Crime	Mental Health	Competency evaluation
Shoplifting	Community Service	4 hours

Release or Detention Decisions:

In **15** cases that advanced as criminal matters, the person being arraigned was released on **personal recognizance**. In many such cases, the court also imposed conditions—especially common was a stay away or no contact order for the place of the incident or a person involved.

There were **3** cases this week, all involving drug possession, in which an **ADA asked for bail** but the judge released the individual on **personal recognizance**. Once again, we see that ADAs often asked for bails equal to or higher than what the judge ultimately imposed. We are not sure whether DA Rollins has given her ADAs a clear directive on not seeking bail for these 15 charges; as points of comparison, Wesley Bell in St. Louis County had [day-one interim policy](#), whereas DA Larry Krasner in Philadelphia released [his bail policy](#) in an internal memo dated February 15th, about six weeks into his term.

Here are the stories of those 3 cases:

- The man being arraigned was a passenger in a vehicle that was pulled over for broken tail lights and plate lights. Police ran a check on his ID and found an open warrant, then searched him and found 11 rock-like substances believed to be crack cocaine. The search did not reveal additional drug paraphernalia on his person. He admitted to being a drug user and is being charged with Class B possession with intent to distribute. As a reminder, "intent to distribute" is a judgment call the ADA makes and is [not based on a weight limit](#). The ADA asked for \$500 cash bail and transport to BMC Central for a warrant recall, noting that he had multiple defaults. The defense noted that he was not employed and would be unable to afford bail. Also, the probation warrant was the result of him voluntarily contacting probation himself to inform them of his release from a program. The judge did not set bail, releasing the man on personal recognizance, and scheduled a probable cause hearing for March.

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- In another case where a man was charged with Class B drug possession, the ADA asked for bail to be revoked on another case, \$300 bail to be set on the possession charge, and that the man be required to abstain from alcohol. The judge released the man on personal recognizance with the condition of alcohol abstention.
- In a third case where a man was charged with both drug possession and possession with intent to distribute, the ADA asked for a stay away order and \$1500 bail. The judge released him on personal recognizance with an order to stay away from his codefendant. This man's codefendant was arraigned on more serious charges, including possession of a stolen, loaded gun. For him, the ADA asked for and the judge set \$25,000 bail, a GPS, a stay away order, and a curfew—despite his defense attorney advocating for release given his strong ties to the community. As a reminder, bail is only supposed to ensure one's appearance in court and judges are required to consider a person's ability to pay, regardless of the seriousness of the alleged crime.

This week in only **1** case exclusively involving charges DA Rollins pledged to decline, **bail** was set. The judge set a **\$500** bail on a driving charge.

In the remaining **15** cases, we don't know the final release decision or case outcome because the arraignment was continued—i.e. postponed to a future date or time (**6** cases), the person being arraigned remained detained (despite the judge deciding to release them on personal recognizance on the pending charges) in order to resolve a warrant in another court (**3** cases), the person failed to appear for arraignment and a warrant was issued for their arrest (**4** cases), or the courtwatcher left before the disposition was announced (**2** cases).

The charge breakdowns are as follows [keep in mind that some folks had multiple charges]:

Charge	Number of Cases
Trespass	8
Shoplifting	2
Larceny under \$1200	1
Disorderly Conduct	3
Disturbing the Peace	0
Receiving Stolen Property	3
Driving Cases (suspended or revoked license or registration)	56
Breaking and entering for the purpose of shelter	0
Wanton/Malicious Destruction of Property	0
Threats (not domestic violence related)	3
Minor in Possession Alcohol	0
Drug Possession	9
Drug Possession with Intent to Distribute	5
Resisting Arrest	2

In **16** of these cases, the person being arraigned was **in jail** at the time of arraignment. Among those 16 individuals,

- **8** were released on **personal recognizance**,

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- **1** had their case **diverted** (charges were trespass & disorderly conduct), and
- **3** had their cases **dismissed** (charges were trespass & disorderly conduct; trespass & resisting arrest; a driving charge).

The remaining **4** people were held for transport to another court for an open warrant (**3**) or had their case continued (**1**).

In other words, **12** people spent time in jail and ultimately were not prosecuted or were released; they were detained without an ability to shower, change clothes, see their kids, walk their pets, take their medications, or communicate with their jobs or families—only to have a judge determine there was no good reason to detain them.

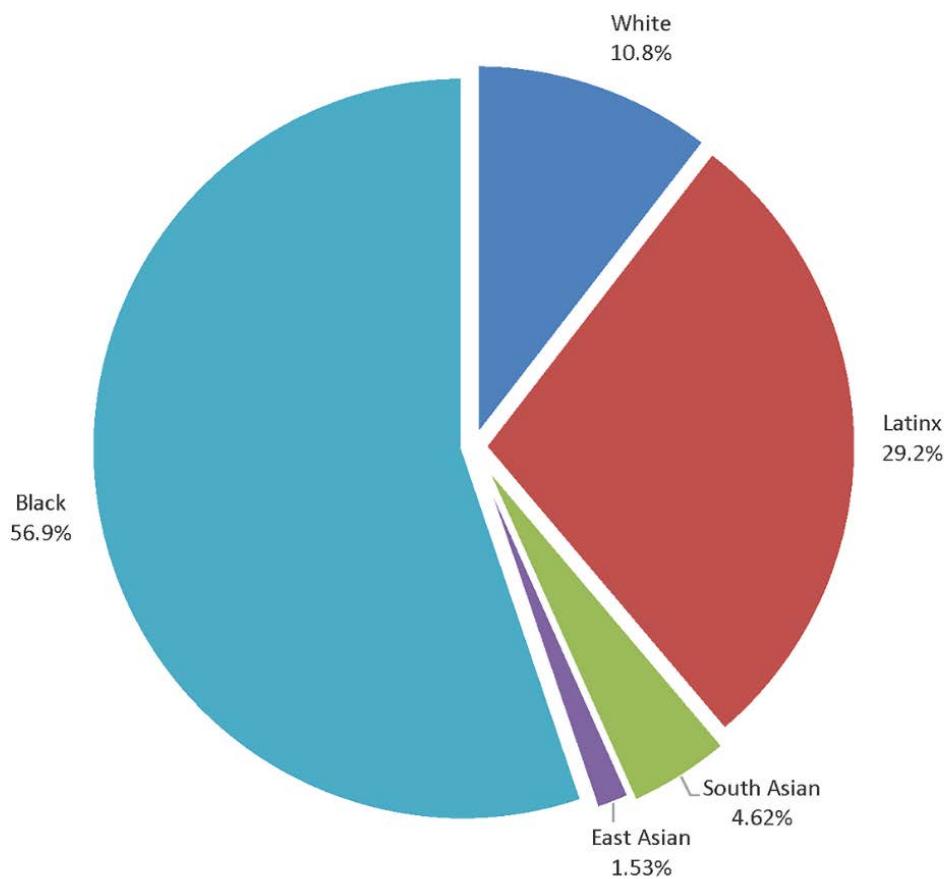
Further, this means in **75%** of cases in which a bail magistrate declined to release someone, the judge released the individual or diverted or dismissed that person's case.

Demographics³ – Who is Prosecuted for these Offenses?

Of the 65 declination cases observed this week in which courtwatchers noted demographic information, the racial breakdown of the people arraigned was as follows:

Race of Folks Appearing Exclusively for Charges on Decline to Prosecute List:

Week 3



56.9% Black, 29.2% Latinx; 10.8% white, 4.6% South Asian, and 1.5% East Asian.

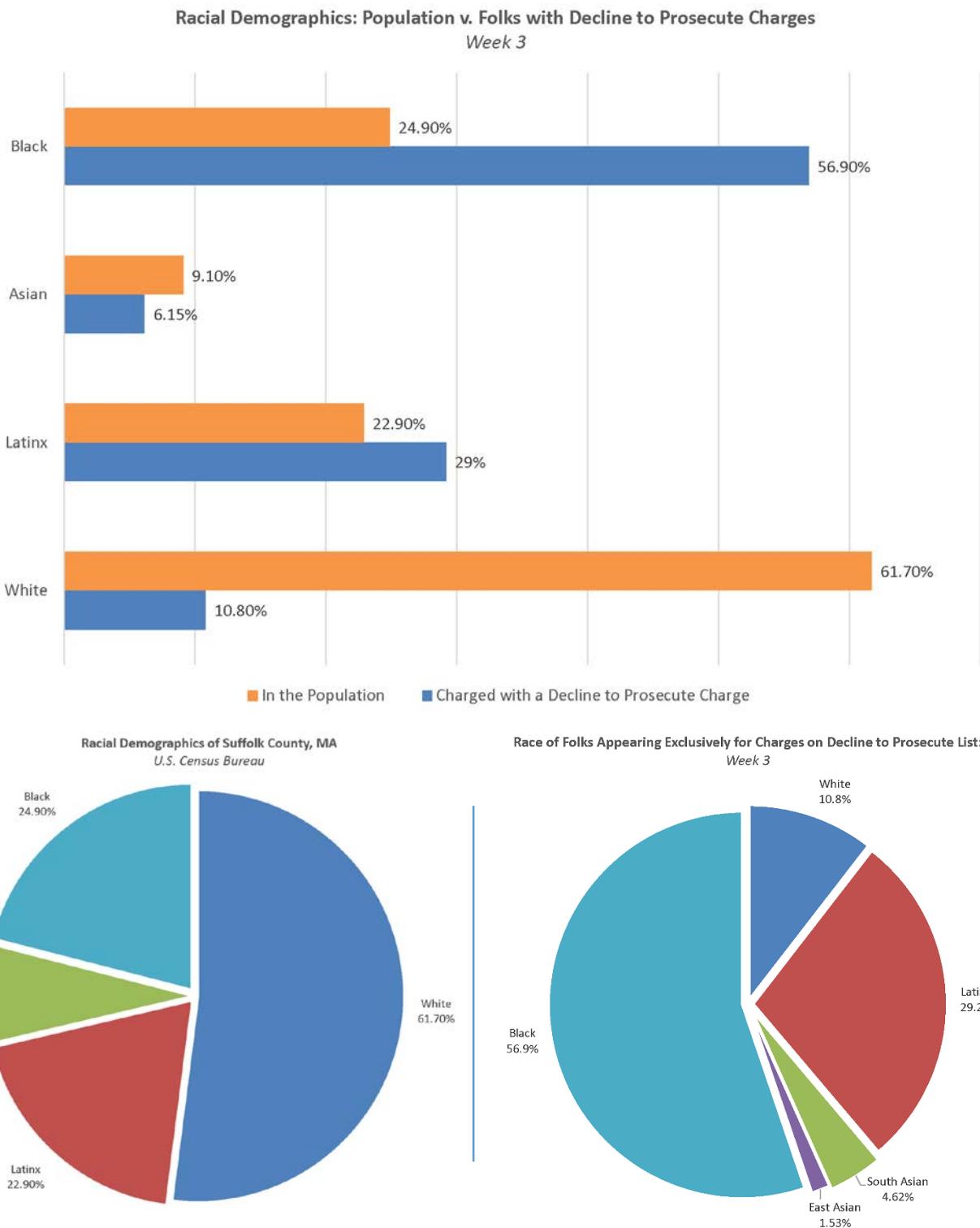
According to the [U.S. Census Bureau](#), the demographics of Suffolk County are as follows:

24.9% Black or African American, 22.9% Hispanic of Latino, 61.7% white, 9.1% Asian, 3.4% two or more races, .7% Native American or Alaskan Native, .2% Native Hawaiian or Pacific Islander

³ Courtwatchers write down demographic information (age, race, gender) based on observation alone; we recognize that this is an imperfect way to determine markers of identity. We ask courtwatchers to note this information because (1) courts are unlikely to disclose this information even if we requested every docket; and (2) the system operates based on an individual's outward perception and expression, regardless of their stated identity, so demographic observations are a reasonable methodology for this particular project. We again reiterate that courtwatchers can select as many racial demographic markers as apply.

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Black and Latinx defendants are once again starkly overrepresented compared to the population, while white defendants are starkly underrepresented.



Cause for Concern: Practices to Change

As stated above, **31** cases involving only charges to be declined were **not** dismissed or diverted. Those cases should also be declined, and we expect this to change in the weeks to come.

Courtwatchers observed **3** cases involving charges from the decline to prosecute list in which an ADA asked for bail but the judge ultimately released the individual on personal recognizance. **We again emphasize** that ADAs should always recommend release on personal recognizance in cases when the person is not a flight risk and should never request bail for charges on the do not prosecute list.

There were also [instances](#) this week in which an ADA asked for conditions and the judge overruled the ADA and dismissed the case outright. In all cases, we hope the ADA asks for the least burdensome outcome that will resolve the case. For all 15 charges DA Rollins has identified, we believe the cases should generally be dismissed without any conditions.

We were very concerned this week that so many warrants were issued when a person did not appear in court. In **4** cases ADAs asked for warrants to be issued and the judge obliged. We encourage DA Rollins to train ADAs to scrutinize whether a default reflects a willful failure to appear, or if instead there may be another explanation to excuse a person's absence from court. We often see people who did not appear in court because of housing insecurity (they never got the summons) or who were unable to appear because of a hospital stay or commitment to a treatment program. Being arrested is a traumatic experience for anyone, and DA Rollins should do what she can to minimize arrests. Overall, failure to appear rates remain incredibly low—and studies show that they can [be lowered further](#) by redesigning confusing summons notices and sending text message reminders.

Takeaways: Reactions from the CourtWatch MA team

Comparing each week to the week before, we have noticed more cases involving the 15 charges being declined and fewer cases continuing as criminal matters. This is a positive trend line. We hope it is not an anomaly but instead the result of ADAs learning how to apply District Attorney Rollins' policy to decline the 15 crimes she has identified as criminalizing poverty, addiction, and mental illness.

Still, as this week's findings again demonstrate, her office is still actively prosecuting people for these crimes. As we see this week from our careful sifting of dismissed and diverted cases, in [many](#) cases folks face court costs or community service hours to resolve their cases and are given future court appearances to prove compliance.

We remain deeply concerned about ADAs requesting and judges imposing conditions. DA Rollins recognizes that these 15 offenses criminalize poverty. Forcing someone to pay court costs as a condition before dismissal is counterproductive. If someone can't make bail – which is refundable – will they be able to pay off court fees? In many cases, the reason for the underlying issue is purely economic. For example, we see so many driving cases in which someone's license was suspended because of an unpaid fee, whether \$6,000 owed to the IRS or outstanding child support. In order to resolve their diverted case, they'll have to resolve the debt or get on a payment plan as well as pay their court costs and a license reinstatement fee. And if they don't? A new default, a new warrant, perhaps a [weekend in jail](#).

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In cases when it appears the judge is being lenient, poor and working class people may still struggle to meet expensive or time-consuming conditions that have no public safety benefit. We hope DA Rollins will encourage ADAs to think carefully about ability to pay not only when requesting bail—which lawfully can only be imposed to encourage someone to appear in court for future appearances—but also when (1) imposing conditions of dismissal and (2) seeking a default or warrant instead of a continuance that merely postpones and reschedules the arraignment. For example, this week a man was arraigned on charges of trespass & receiving stolen property who also had a default on his record. His attorney explained that he had been in the hospital during that earlier court hearing which caused the default. Nevertheless, he had to pay a \$50 fee to remove the default.

Finally, we look forward to a public release of office policy and SCDAO internal office data. DA Rollins has been in office for 3 weeks. The electorate is concerned and deserves to know what's happening behind closed doors.