THE FIFTH WEEK

From January 30th to February 5th, our courtwatchers observed **192** cases at arraignment across three divisions of Boston Municipal Court (BMC Central, Roxbury, and Dorchester).[1]

This week, **41%** of the cases we observed 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. As we've seen every week since we began observing, this means almost half the cases we observed this week involved only crimes that District Attorney Rollins has identified as low-level, non-violent crimes rooted in poverty, mental illness, and addiction.

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

Reminder: under the umbrella of cases that DA Rollins pledged to decline to prosecute, we 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 are **diverted** cases. We remain concerned about the impact of imposing conditions which require time, money, or transportation on poor and working class people facing charges.

There were 79 cases involving ONLY charges on the decline to prosecute list this week.

> **58%** of these cases (**46** cases) advanced as criminal matters.
>
> **18** of these cases were **dismissed** at arraignment.
>
> **15** of these cases were **diverted** at arraignment
>
> Therefore, a total of **33** cases, or roughly **42%**, were **declined** within the meaning of DA Rollins' campaign pledge.
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> Our datasets from week to week are relatively small, so we don't want to dwell on the fact that, compared to weeks prior, a noticeably larger number of cases remained criminal cases this

[1] This week we again removed cases from our dataset representing status hearings, diversion check ins, restraining orders, probation violations, 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. For the same period (January 30th to February 5th), a search on MassCourts reveals 93 cases out of BMC Central, 58 cases out of Roxbury, and 79 cases out of Dorchester, for a total of 230 cases this week.

[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.

week. This week's anecdotal findings suggest that things have, at best, plateaued, and perhaps gotten worse.

However, we *can* confirm a disappointing finding: **things aren't getting better**.

After five weeks of monitoring and analysis, we conclude that DA Rollins has not made any significant strides to progressively implement her list of charges to be declined.

We want DA Rollins to succeed in implementing her bold campaign pledges; our First 100 Days project aims to hold her accountable precisely because we are excited at the prospect of transformation for our courts and our communities.

February 21st marks 50 days in office. We are halfway through the First 100 Days. The absence of policy and the lack of transparency to date deeply concern us.

What gets dismissed?

For the fifth week in a row, the ***majority*** of dismissals were driving cases – 12 of the 18 cases (**67**%) that were dismissed. The other 6 cases dismissed at arraignment were incidents of larceny under $1200 and threats (**1**), shoplifting (**2**), drug possession (**2**) and drug possession with intent to distribute (**1**).

Both of the shoplifting cases were dismissed after the individuals had spent at least one night in jail, and the judge found community service "deemed served" based on the time spent locked up pre-arraignment. In one case, the man had spent 18 hours locked up; in the other, the woman had spent ***two days*** in jail for shoplifting chocolate from a CVS. The courtwatcher also noted that she has a serious addiction, and her circumstances were likely exacerbated by her time in jail.

Though we have coded these cases as outright dismissals because the individuals were not required to report back to court in the future and the charges were dismissed, the fact that a judge essentially counted each defendant's pre-arraignment detention as "time served" to satisfy diversion complicates how we categorize these cases. We also note that these were two different judges, two different courts, and two different days. This is not just one judge's anomalous practice.

While it's appropriate that these cases were dropped, the time they spent in detention is harmful. On top of that, it is troubling that judges equate community service with the travesty of unwarranted unnecessary pre-arraignment incarceration. It's alarming that judges impose any conditions when cases should be dismissed and even more upsetting that both judges and clerks aren't doing more to prevent overnight and weekend-long detention for misdemeanors and low-level felonies. The ultimate problem here is that detention, rather than release, continues to be the default in Suffolk County.

Though we have written about how burdensome conditions of diversion can be, they simply are not equivalent to the trauma and destabilizing force of days spent in jail. We think judges should simply dismiss these cases outright, without relying on improper and unnecessary pretrial detention to justify subsequent dismissal. These folks never should have been jailed to begin with, and these charges never should have been brought. Dismissing these charges in exchange

for time spent in jail is anathema to the plain meaning of a policy of declining to prosecute and exposes that diversion may not always be harm reduction.

Over the past five weeks we have seen very few outright dismissals for most of the charges on DA Rollins' list. Even when a handful of cases involving drug possession or trespass or shoplifting charges were dismissed, usually many more of those charges remained criminal cases. For example, this week only 2 out of 11 possession charges were dismissed and 1 was diverted. That means 72% of this week's possession cases proceeded as criminal matters. Further, at least one of the possession with intent to distribute cases this week was Class D, meaning DA Rollins is bringing criminal charges for intent to distribute marijuana, a legal substance in Massachusetts. (As a reminder, there is no weight associated with intent to distribute, and even distribution and trafficking offenses can be brought for possession of very small amounts of some substances.)

We note that the police have the most resistance to dismissing possession and possession with intent to distribute cases, which besides driving offenses also happen to be the most populous charge categories on DA Rollins' list to decline. These decisions are especially important to shifting the punitive culture of the courts. Abundant public health research identifies the risks and costs of trying to prosecute our way out of the opioid crisis, and DAs who chose to follow science instead of fear-mongering have seen dramatic, life-saving results.

A majority of driving cases (**57.5%**) were declined this week at arraignment. Undocumented people are particularly vulnerable when arrested and arraigned on driving charges. It is our hope that declining to prosecute all driving charges will disincentive arrest so driving matters can be handled civilly like they are in many predominantly white suburbs.

Driving Charges (40 total)		
Dismissed (without conditions)	**12**	**30%**
Diverted (with conditions)	**11**	**27.5%**
Released on Personal Recognizance	**11**	**27.5%**
Other Outcome (arraignment continued, held for transport, warrant issued, cash bail)	**6**	**15%**

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.

This week **15** cases were diverted. Every disposition involved at least one condition, like treatment; a court fee; community service; or probation. ADAs usually refer to these cases as "conditional dismissals," but individuals were generally required to report back to court at least once on a future date to prove compliance with the condition. Additional appearances cause stress and strain on families that could be avoided by outright dismissals.

Much like dismissals, the ***vast majority*** of diversions were driving cases – 11 of the 15 (73.3%) 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.

In one driving case, the man being arraigned in Dorchester was held on a straight warrant on an underlying charge of driving without a license. Judge Georges asked him how long he had been in jail. He had been held since 11:00 AM the day before. The ADA offered diversion: payment of a fine of $250 or 12 hours community service. Faced with these options, he was going to choose community service, but the judge made it a $10 fee and pointedly said it was for a civil matter. The judge implied this case should be a civil not a criminal matter, but prosecutors still seek criminal punishments, however minor. This was not the only instance observed this week in which an ADA asked for ***an additional condition***, like a fine or more than a full day's work of community service hours, on a "charge to be declined" even after the person was held in jail.

As a reminder, completing community service within the requisite timeframe may mean people need to call out of or cancel work, miss classes, or arrange childcare. Though many judges allow individuals to do community service at a place of their choice, some mandate that individuals serve through the state-run program that requires manual labor and is only offered on certain days.

The other diverted cases were:

Diverted Cases (15 total: 11 driving charges, 4 other)		
Charge(s)	***Type of Diversion***	***Outcome***
Drug Possession	Drug Treatment	Return with proof of treatment program
Shoplifting	Community Service	12 hours; stay away from Apple Store
Larceny under $1200 & Wanton/Malicious Destruction of Property	Probation	Evaluation for 276A diversion
Trespass	Court Condition	No loitering in Dudley Square for 60 days

Release or Detention Decisions

In **31** 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. Sometimes a person is required to stay away from their own home or a major transit hub through which they have to commute.

In **5** cases exclusively involving charges DA Rollins pledged to decline this week, **bail** was set. Bail amounts ranged from $100 to $1000. In 3 of these 5 cases, the individual being arraigned was facing charges of drug possession and/or possession with intent to distribute. We've seen repeatedly that the Suffolk County District Attorney's Office continues to treat drug charges like these as a serious crime, even though they are among the charges to be declined.

One case this week exemplified the disturbing practices of overcharging, asking for bail people can't afford, and criminalizing marijuana which is a legal drug. The ADA requested $500 bail, but the judge released the young man on personal recognizance. We can say without hesitation that he was profiled, as the original reason for stopping him ultimately did not become a criminal

charge in his case. He was driving, an officer determined (only after he was pulled over) that his insurance had lapsed, and he volunteered that he had marijuana in his trunk. The officer found a digital scale with the marijuana and a small amount of cocaine on his person, which he explained was for personal use. He was charged with possession and possession with intent to distribute for both substances. In addition to $500 bail, the ADA asked for an order to remain drug and alcohol free, even though alcohol was totally irrelevant to the charges. He was released on personal recognizance.

In the remaining **10** 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 (**3** 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 did not appear for arraignment and a warrant was issued (**1** case), or the courtwatcher wasn't sure what happened (**3** cases). We note that people not showing up for arraignment happens rarely, and that courts don't have to verify that a person actually received a summons before issuing an arrest warrant—a disturbing practice we hope DA Rollins will push to change.

Our data collection on bail may undercount people who have already paid bail at the police station. Courtwatchers have not been able to reliably document when someone has already posted bail, and in what amount, if they are freely walking into court. This is not always explicitly addressed on the record. Bail is set at the police station by court clerks. How bail amounts are decided is not transparent to the public and bail is set with very little oversight.

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

Charge	**Number of Cases** *Week 5*	**Total So Far** *All 5 Weeks*
Trespass	3	38
Shoplifting	5	19
Larceny under $1200	8	23
Disorderly Conduct	0	12
Disturbing the Peace	0	2
Receiving Stolen Property	1	9
Driving Cases (suspended or revoked license or registration)	40	242
Breaking and entering for the purpose of shelter	2	2
Wanton/Malicious Destruction of Property	3	7
Threats (not domestic violence related)	5	13
Minor in Possession of Alcohol	0	0
Drug Possession	11	59
Drug Possession with Intent to Distribute	12	45
Resisting Arrest	2	5

As a point of interest, though the tallies of drug possession and drug possession with intent to distribute charges seem similar from week to week, they rarely overlap much. This week only three cases involved charges of *both* drug possession and drug possession with intent to distribute.

In **23** of these cases, the person being arraigned was **in jail** at the time of arraignment. Among those 23 individuals,

- **10** were released on **personal recognizance**,
- **4** had their cases **diverted**, and
- **3** had their case **dismissed**.

The remaining **6** people were assessed bail (**3**), held for transport to another court for an open warrant (**2**), or the courtwatcher was uncertain of the outcome (**1**).

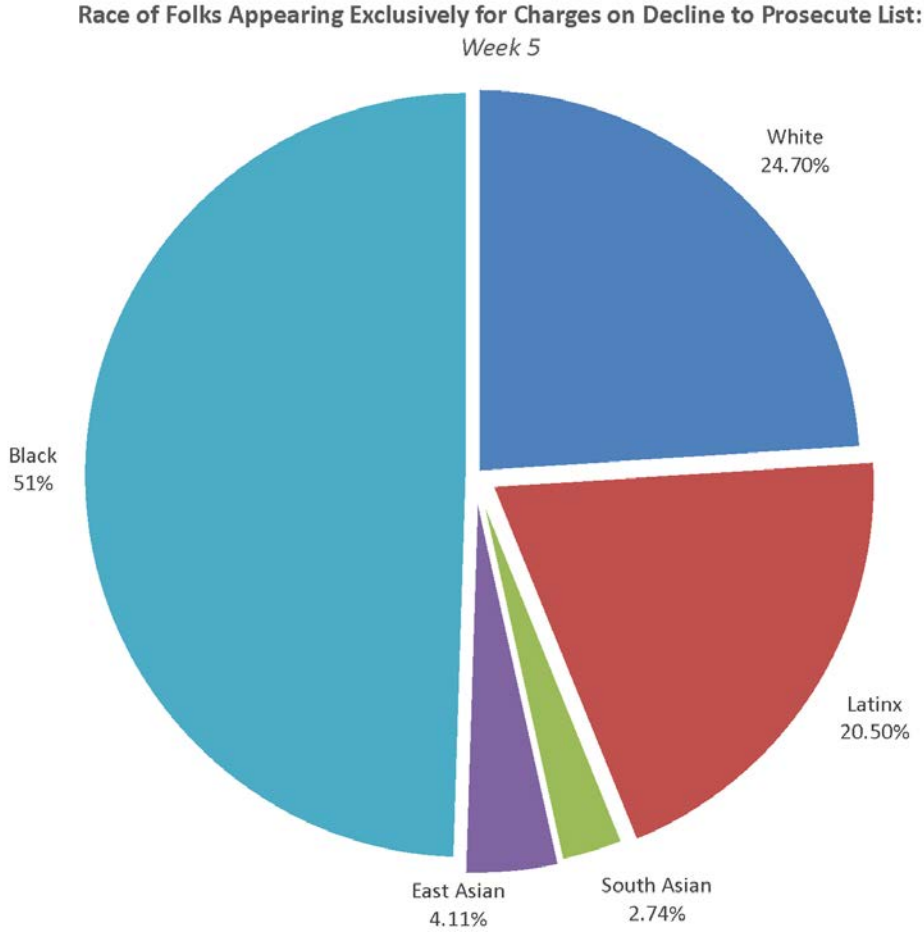
In other words, **17** people spent time in jail and ultimately were not prosecuted or were released; they were detained without an ability to shower, change clothes, see their kids, walk their pets, take their medications, or communicate with their jobs or families—only to have a judge determine there was no good reason to detain them.

Further, this means in **73.9%** of cases in which a bail magistrate declined to release someone this week, the judge released the individual or diverted or dismissed that person's case.

While clerks make decisions to set bail at police stations independently of the DA's office, we hope that District Attorney Rollins will both express her contempt for pre-trial detention and implement a strong policy that avoids pre-trial detention at all costs.

Demographics[3] **– Who is Prosecuted for these Offenses?**

Of the 73 decline to prosecute cases observed this week in which courtwatchers noted demographic information, the racial breakdown of the people arraigned was as follows:



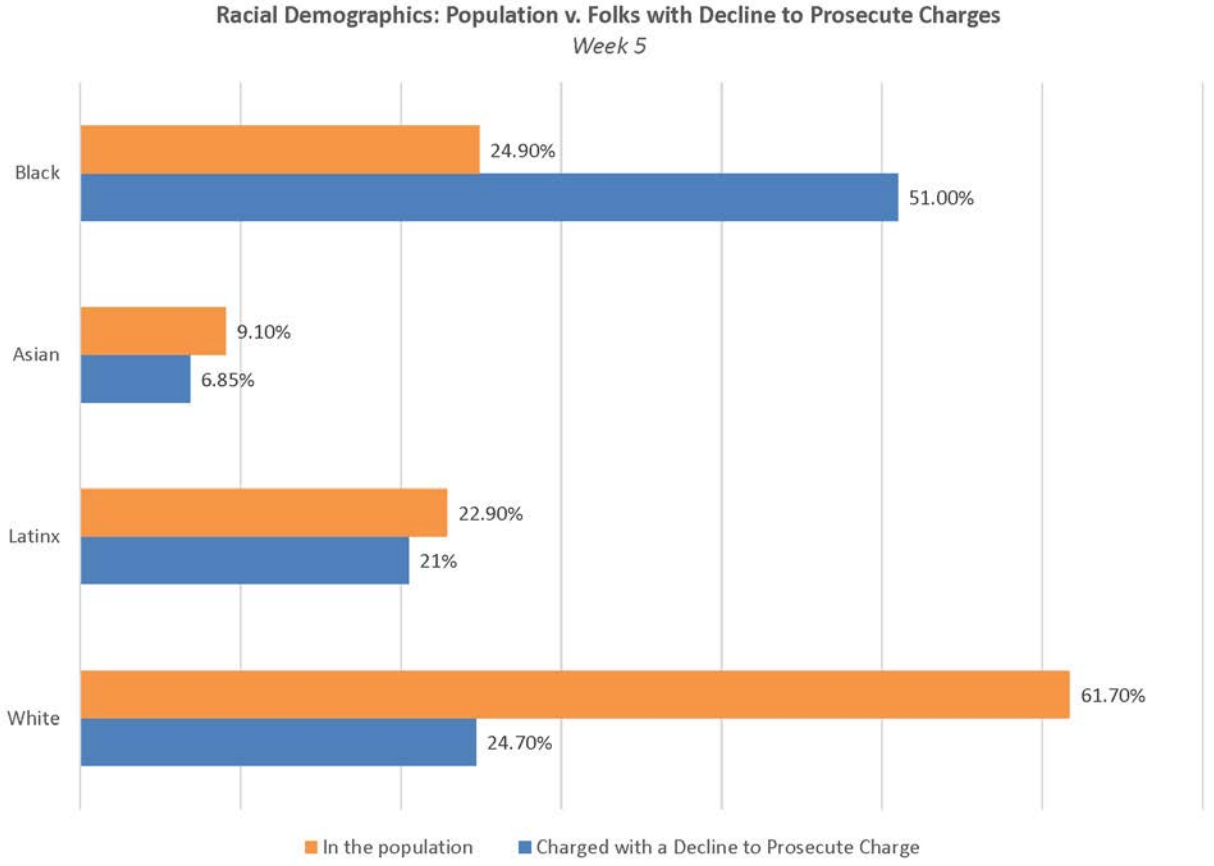
51% Black, **20.5%** Latinx; **24.7%** white, **2.74%** South Asian, and **4.1%** East Asian.

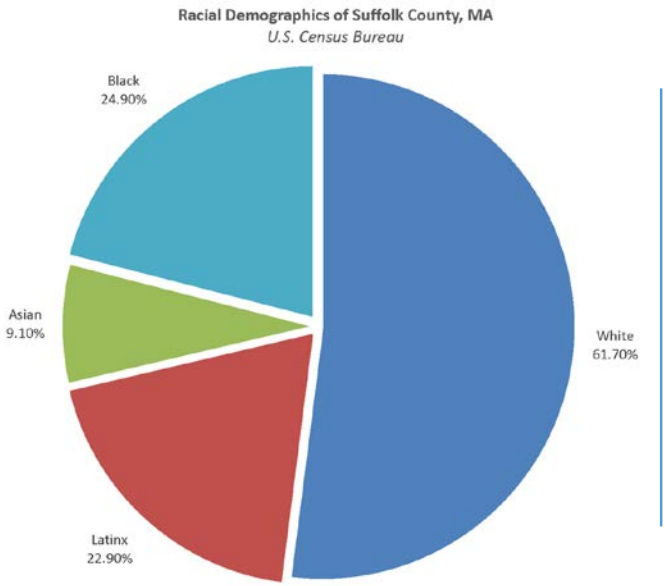
According to the U.S. Census Bureau, the demographics of Suffolk County are as follows:

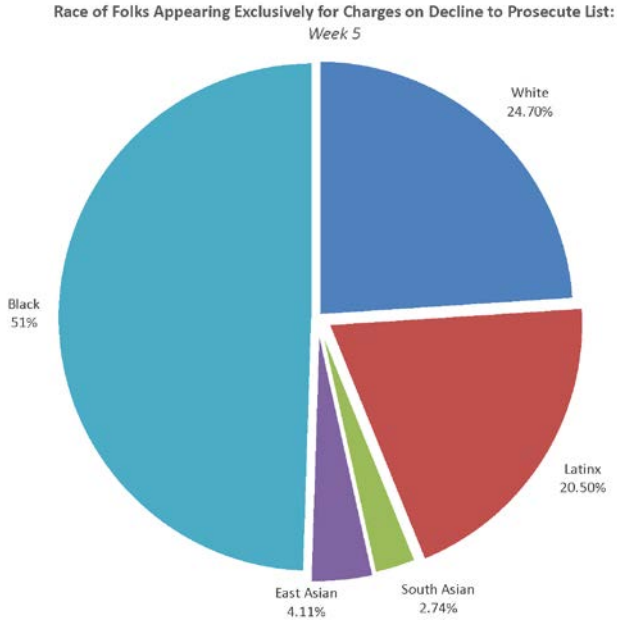
24.9% Black or African American, **22.9%** Hispanic of Latino, **61.7**% white, **9.1%** Asian, **3.4%** two or more races, **.7%** Native American or Alaskan Native, **.2%** Native Hawaiian or Pacific Islander

[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.

Black defendants are once again astronomically overrepresented compared to the population (this week by a factor of 2:1), while white defendants are starkly underrepresented.







Other Charges: Beyond the Decline to Prosecute List

As we saw in weeks 2 and 4, a number of the cases this week that involved charges besides or in addition to the DTP charges were other minor offenses—just ones that DA Rollins did not pledge to decline. For example, **10** of the cases involved default removals—clearing up a prior absence from court or inability or failure to pay a fine, fee, or restitution.

This week **20** cases we observed were criminal charges leveled against people for failing to attend jury duty, many of whom were actually ineligible to serve (e.g. not U.S. citizens). That means more than 10% of all cases observed this week, and roughly 18% of non-DTP cases, were criminal charges for failure to appear for jury duty. In all of these cases, even if the defendant was not present, the charges were uniformly dismissed.

Much like last week, **4** cases observed this week were for drinking in public, a minor ordinance violation. All 4 cases were dismissed. As a point of comparison, we also observed only 4 cases involving a firearm this week, compared to 79 cases involving only charges to be declined.

Cause for Concern: Practices to Change

As stated above, **46** cases involving only charges to be declined were ***not*** dismissed or diverted. Those cases should also be declined, and we hope that this will 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. ***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.

Courtwatchers documented **12** cases this week involving charges from the decline to prosecute list in which ADAs asked for conditions instead of dismissing the case outright. Further, courtwatchers documented **21** such cases in which ADAs asked for release on personal recognizance—intentionally continuing the case as a criminal matter.

In all cases, we hope ADAs seek the least burdensome outcome that will resolve the case. For all 15 charges DA Rollins has identified, we believe cases should generally be dismissed without conditions.

Policy: None Publicly Issued Yet

Despite public pledges—to have an ICE security policy in place within 30 days; to issue a memo this month on charges to be declined—there have been no publicly issued policies. We have now passed DA Rollins' ***own benchmark*** of six weeks, the time it took DA Larry Krasner in Philadelphia to issue his first policy memo.

Last week we highlighted a number of jurisdictions around the country with bail policy; some of these policies have been in place for more than a year. Just today, the Philadelphia District Attorney's Office and academics released a report finding that the policy had a tremendously positive effect: reducing the pre-trial jail population without increasing recidivism or making it more likely people would miss their court dates. Indeed, a memo alone can create change.

Nevertheless, DA Rollins' office still has no bail policy. We continue to see ADAs request bail for charges that criminalize addiction and compound racial disparities in Suffolk County, despite the rhetoric of seeking "services not sentences" and working to make the system fair.

Takeaways: Reactions from the CourtWatch MA team

Even as she maintains a packed slate of public appearances and speaks passionately about her campaign promises, DA Rollins remains a steward of the status quo in Suffolk County. The Suffolk County District Attorney's Office is still actively prosecuting people for the 15 crimes DA Rollins pledged to decline. In many cases folks face court costs or community service hours to resolve their cases and are given future court appearances to prove compliance.

Based on the information we have gathered and recent reporting, DA Rollins knowingly continues to criminally prosecute these cases. It is difficult to square her public statements with the reality of what is happening in our courts.

We have now published five weeks of data analysis. As of our date of publication, DA Rollins has already been in office for more than six weeks. She ran on a platform of transparency and she has spoken candidly about supporting CourtWatch and the push for accountability, yet we have seen (1) no published data from the SCDAO; (2) no policy; and (3) no training for ADAs. To put it mildly, her constituents are both disillusioned and disappointed.

DA Rollins can renew public trust with a public release of office policy and SCDAO internal office data. We're waiting. And we'll be watching.