THE SIXTH WEEK

At the outset, we want to acknowledge that our team is behind in releasing digests. CourtWatch MA is an all-volunteer effort and we are working diligently to make all of our data analysis public as soon as possible.

From February 6th to February 12th, our courtwatchers observed **201** cases at arraignment across three divisions of Boston Municipal Court (BMC Central, Roxbury, and Dorchester).[1]

This week, **44.8%** 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 90 cases involving ONLY charges on the decline to prosecute list this week.

> **42.2%** of these cases (**38** cases) advanced as criminal matters.
>
> **38** of these cases were **dismissed** at arraignment.
>
> **14** of these cases were **diverted** at arraignment
>
> Therefore, a total of **52** cases, or roughly **57.7%**, were **declined** within the meaning of DA Rollins' campaign pledge.

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[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 (February 6th to February 12th), a search on MassCourts reveals 111 cases out of BMC Central, 72 cases out of Roxbury, and 97 cases out of Dorchester, for a total of 280 cases filed this week. We note that this number also does not reflect the total number of cases arraigned in these courts; courtwatchers also observe arraignments of older dockets with some frequency.

[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.

After six weeks of monitoring and analysis in three BMC courts, we again see that DA Rollins has not made significant strides to progressively implement her list of charges to be declined.

We want DA Rollins to succeed in implementing her bold campaign pledge to decline to prosecute these minor offenses that comprise almost half of all criminal court dockets every week in the BMC courts where we observe.

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. More than 60 days into her administration, we remain concerned about when policies will be issued and implemented.

Both in the press and in meetings with community members, DA Rollins' office continues to promise that much-anticipated changes are coming. Compared to the rollout of policy by her peers—whether Larry Krasner in Philadelphia, Wesley Bell in St. Louis, or Andrea Harrington in Berkshire County, MA—DA Rollins has fallen behind.

We are more than halfway through the First 100 Days. Her office remains without policy, even though DA Rollins has spoken publicly about the fact that as a District Attorney she is not hampered by any legislative body and can act swiftly as an executive to enact her vision.

What gets dismissed?

For the sixth week in a row, the ***majority*** of dismissals were driving cases – 23 of the 38 cases (**60.5**%) that were dismissed. The other 15 cases dismissed at arraignment were incidents of trespass (**9**), shoplifting (**1**), disorderly conduct (**2**), wanton or malicious destruction of property (**1**), and drug possession (**2**).

In **3** of these dismissed cases, the person had spent time in jail, only to subsequently have their case dismissed entirely:

- In a **trespass** case, the man being arraigned had a default on the charge from January, but still the ADA asked for a dismissal conditioned on eight community service hours already completed. The judge dismissed in view of that prior service and without further conditions, but specified that the dismissal was post-arraignment because this person has a history of multiple trespass charges. A post-arraignment dismissal means charges will appear on a person's records and they will have to answer 'yes' if they are ever asked if they have been charged with a crime.
- In a **shoplifting** case, the ADA asked for release on personal recognizance, but the judge dismissed it outright.
- In a **drug possession** case, the young Black man being arraigned had been enrolled in detox and the Salvation Army treatment program, but had a seizure while there and was transferred to a hospital for care. He was taken into custody because probation did not realize that he had entered into the treatment program. The ADA asked to dismiss pre-arraignment, which the judge approved.

We have coded these cases as outright dismissals because the individuals were not required to report back to court on a future date and the charges were dismissed. However, the fact that a

judge in one case counted prior community service as "time served" and the dismissal was post-arraignment complicates this categorization.

As we discussed at length last week, while it's appropriate that these cases were dropped, any time spent in detention is harmful. ADAs should stop bringing these charges altogether, or at the very least, ask that judges dismiss these cases outright.

Over the past six 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 15 possession charges were dismissed and 2 were diverted. That means 73.3% of this week's possession cases proceeded as criminal matters.

Years of public health research has confirmed that "[t]he risk of overdose death after release from correctional facilities has been shown to be more than 10 times the risk in the general population." And yet the police have the most resistance to dismissing possession and possession with intent to distribute cases, which besides driving offenses are also among 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 (**73.2%**) 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 (41 total)		
Dismissed (without conditions)	**23**	**56.1%**
Diverted (with conditions)	**7**	**17.1%**
Released on Personal Recognizance	**5**	**12.2%**
Other Outcome (arraignment continued, warrant issued, cash bail, outcome unknown)	**6**	**14.6%**

What gets diverted?

We categorize 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 **14** 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, **half** of the diversions were driving cases – 7 of the 14 (50%) 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, completing community service, or enrolling in driving school.

The other diverted cases were:

Diverted Cases (14 total: 7 driving charges, 7 other)		
Charge(s)	***Type of Diversion***	***Outcome***
Larceny under $1200	Court Costs	$150
Shoplifting	Court Costs	$150
Disorderly Conduct	Court Costs	$150
Trespass, Wanton/Malicious Destruction of Property, and Drug Possession	Community Service	18 hours
Larceny under $1200	Probation	Evaluation for 276A diversion
Drug Possession	Community Service	10 hours
Trespass	Community Service	10 hours

The case of larceny under $1200 which was referred to probation for a diversion evaluation was charged against a 20-year-old high school student. A legislative Task Force is currently evaluating raising the age of juvenile court jurisdiction to include emerging adults ages 18 to 20, consistent with a vast body of neuroscience research about brain development among juveniles and young adults. Especially because this individual is so young and should be encouraged to focus on school, additional conditions and obligations may do more harm than good. DA Rollins should reconsider whether diversion is truly preferable to dismissal in all cases, but especially a case like this.

We also note that, though DA Rollins emphasized during her campaign the need to get people access to services, not hand down sentences, we often see punitive conditions (court costs and community service hours) to address what DA Rollins has identified as root causes in many cases like these: poverty, addiction, and mental illness. Especially in theft cases, where poverty or addiction may be a primary driving factor of the underlying conduct, imposing even a $150 fee can prolong someone's court involvement and compound their hardship, keeping them off the path to stability or recovery. In other cases, defense attorneys may file motions to waive such fees and prosecutors may agree or recommend to the judge that the fees be waived.

Finally, as we have said before, 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.

It's important to note that this kind of community service has no restorative value and is imposed before a person has been convicted of any wrongdoing. Pre-arraignment community service is simply a punishment for being arrested.

Release or Detention Decisions

In **17** 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 **4** cases exclusively involving charges DA Rollins pledged to decline this week, **bail** was set. Bail amounts ranged from $100 to $400. In 2 of these 4 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.

In the remaining **17** 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 (**5** 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 (**1** case), the person did not appear for arraignment and a warrant was issued (**8** cases), the person had their bail revoked on a prior case and was held for transport to another court (**1** case), or the courtwatcher wasn't sure what happened (**2** 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 observed non-appearance rate among these minor charges was 8 cases out of 90, a rate of just **8.9%**.

Our data collection on bail may undercount people who have already paid bail at the police station. Courtwatchers have not always been able to reliably document when someone has already posted bail, and in what amount, if they freely walk 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.

In two of the cases this week in which bail was set at arraignment, the judge simply reaffirmed what the bail magistrate had already imposed, which the person had already posted.

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

Charge	**Number of Cases** *Week 6*	**Total So Far** *All 6 Weeks*
Trespass	15	53
Shoplifting	4	23
Larceny under $1200	3	26
Disorderly Conduct	5	17
Disturbing the Peace	0	2
Receiving Stolen Property	1	10
Driving Cases (suspended or revoked license or registration)	41	283

Breaking and entering for the purpose of shelter	0	2
Wanton/Malicious Destruction of Property	3	10
Threats (not domestic violence related)	3	16
Minor in Possession of Alcohol	0	0
Drug Possession	15	74
Drug Possession with Intent to Distribute	2	47
Resisting Arrest	2	7

In **15** of these cases, the person being arraigned was **in jail** at the time of arraignment. Among those 15 individuals,

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

The remaining **4** people were assessed bail (**1**), held for transport to another court for an open warrant (**1**), held for transport to another court for an open warrant with bail revoked on a different case (**1**), or the case was continued (**1**).

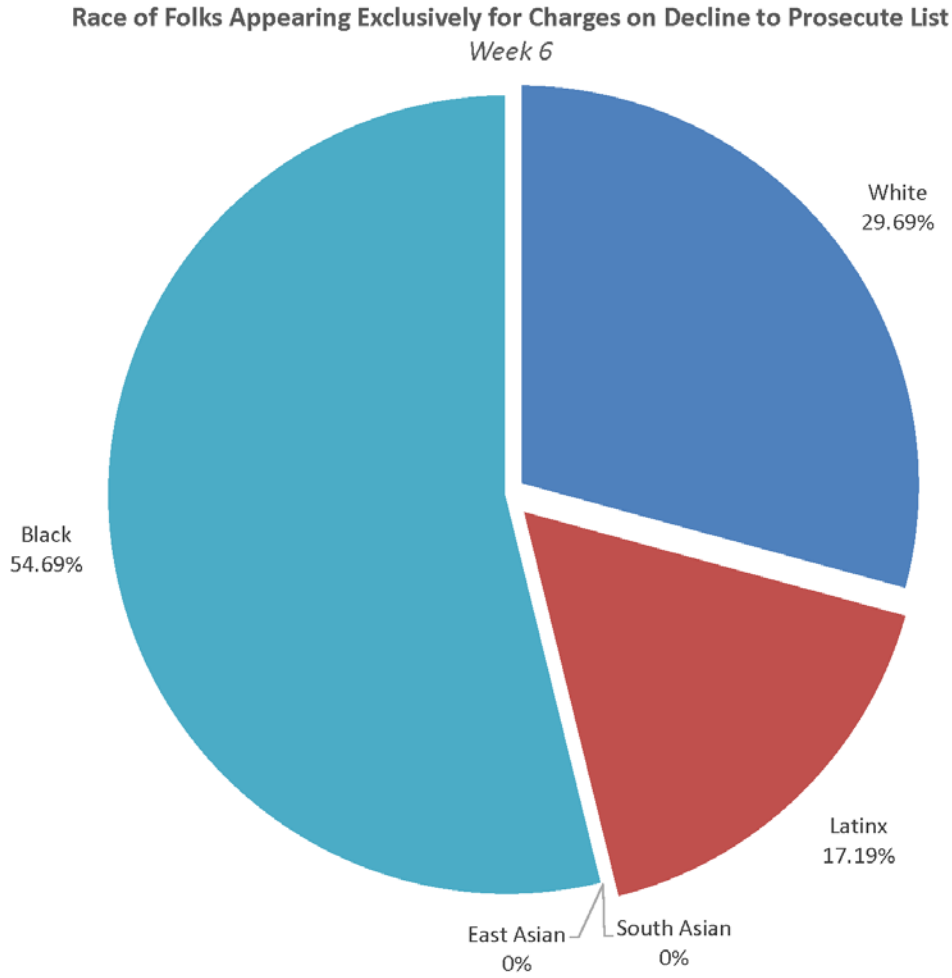
In other words, **11** people spent time in jail and ultimately were not prosecuted or were released; they were detained without an ability to shower, change clothes, see their kids, walk their pets, take their medications, or communicate with their jobs or families—only to have a judge determine there was no good reason to detain them.

Further, this means in **73.3%** 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. After 6 weeks of observing this phenomenon, our data support our assertion that clerks set bails too often and too high at police stations.

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?

This week courtwatchers observed many cases where the person being arraigned did not appear, and therefore racial demographic observations were impossible. Courtwatchers noted demographics in only 64 of the 90 decline to prosecute cases.



Of the 64 decline to prosecute cases observed this week in which courtwatchers noted demographic information, the racial breakdown of the people arraigned was as follows:

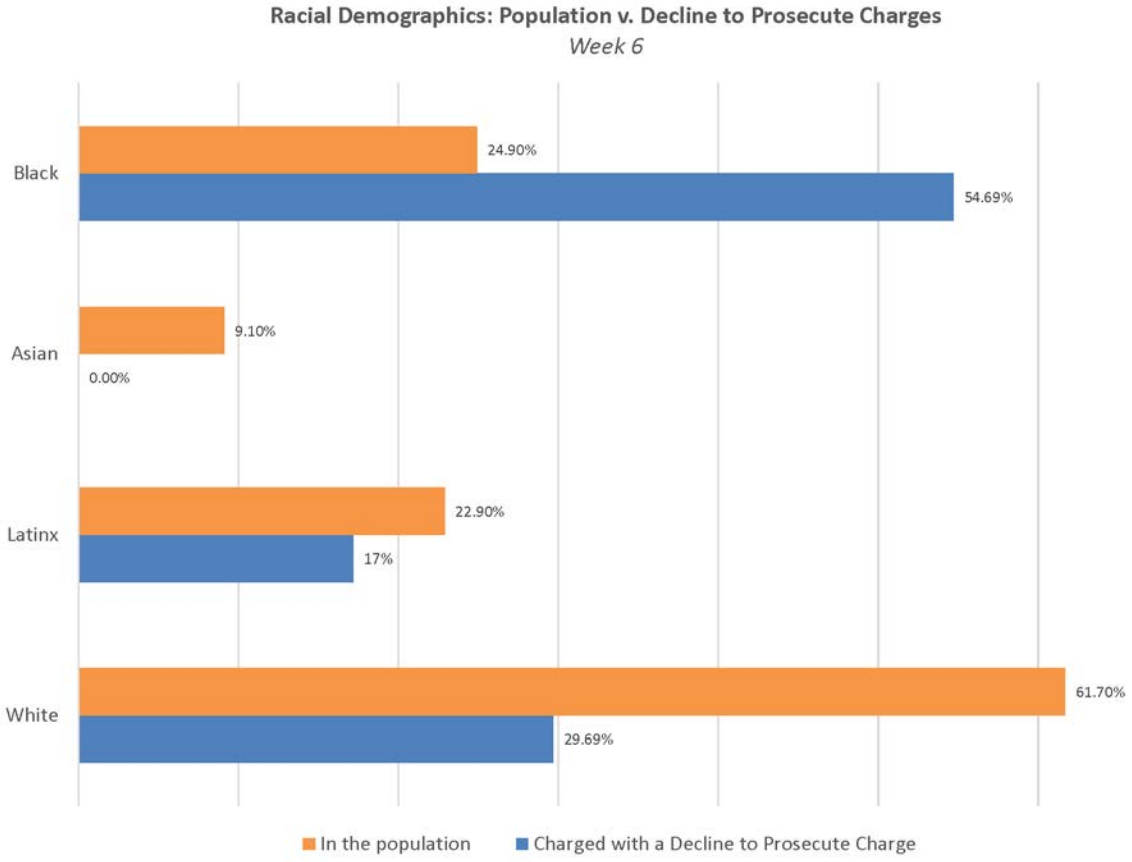
54.69% Black, **17.19%** Latinx; **29.69%** white, **0%** South Asian, and **0%** East Asian.

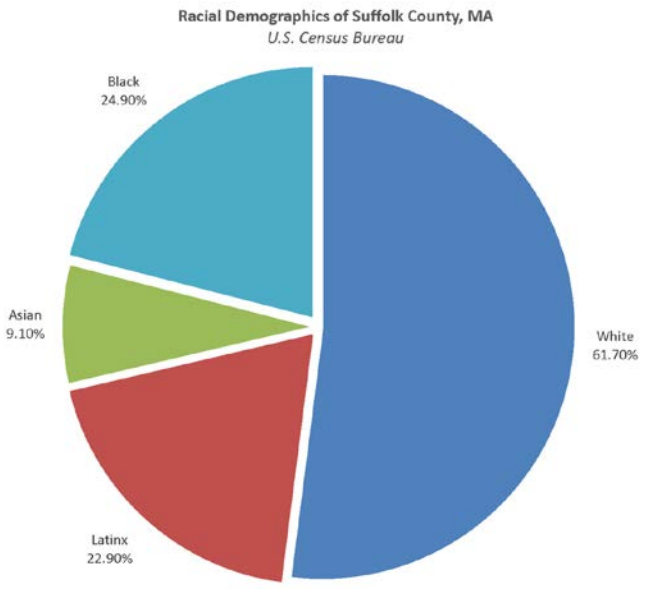
[3] Courtwatchers write down demographic information (age, race, gender) based on observation alone; we recognize that this is an imperfect way to determine markers of identity. We ask courtwatchers to note this information because (1) courts are unlikely to disclose this information even if we requested 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.

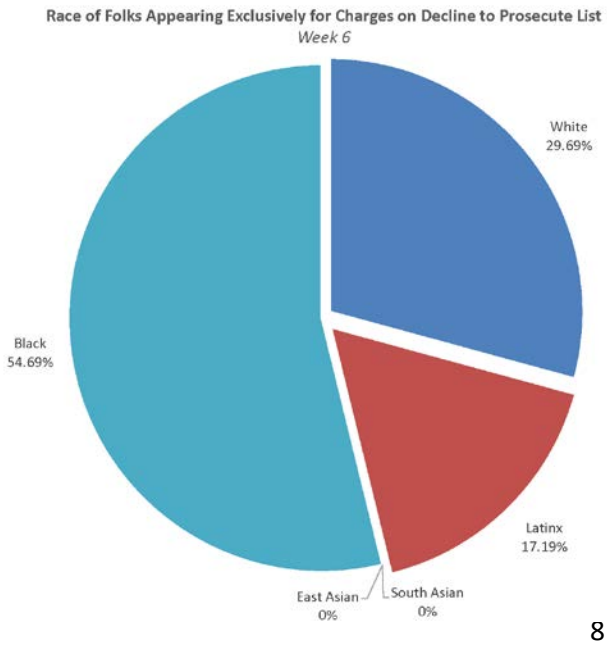
According to the U.S. Census Bureau, the demographics of Suffolk County are as follows:

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

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

Each week we see a number of cases rooted in social or administrative issues that are frequently dismissed and which DA Rollins should consider adding to her pending list of charges to be declined. For example, **6** cases observed this week were for drinking in public, a minor ordinance violation; **3** cases this week were for juror failure to appear. All **9** of these cases, representing roughly 5% of all criminal cases observed this week, were dismissed. Without question, these cases should not be prosecuted.

If a person misses court, even on a minor charge, ADAs continue to ask for judges to issue a warrant. A minor charge plus a missed court date should not subject someone to arrest or even jail. At the very least, ADAs should dismiss these charges pre-arraignment; ideally they should stop bringing these charges altogether.

Cause for Concern: Practices to Change

As stated above, **38** 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 **4** 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 **30** 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 **17** decline to prosecute cases in which ADAs asked for release on personal recognizance—intentionally continuing the case as a criminal matter.

Finally, we saw **1** case in which an ADA successfully requested that bail on a prior case be revoked for a person facing new charges of trespass, threats, drug possession with intent to distribute, and resisting arrest. Because his bail was revoked, this man will now be held for ***60 days*** without the possibility of release. We acknowledge that the ADA did not request bail on the new charges, but he did demand that this man facing charges exclusively on the decline to prosecute list spend 2 months in jail pre-trial, without any safety valve for release. DA Rollins should monitor this practice among her ADAs and prevent this from happening again. Just as we advocate that bail should never be set on a charge to be declined, bail should likewise never be revoked in connection with a docket involving this set of charges.

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

"'There is no control of the power that a DA has,' said Rollins, excepting the vote of the people. Compare that to a mayor who faces a city council, or a governor who works with and against a state legislature, and ***Rollins said she has an unusual ability to enact reforms quickly****.*

Despite public posturing on quick reforms and public pledges on specific policies—an ICE security policy in place within 30 days; a memo last month on charges to be declined; bail policy—there have been no publicly issued policies.

We have long-passed DA Rollins' ***own benchmark*** of six weeks, the time it took DA Larry Krasner in Philadelphia to issue his first policy memo. We are publishing this digest late; we are now well into week 9 without any office policy.

Takeaways: Reactions from the CourtWatch MA team

DA Rollins has done little to disrupt the status quo in Suffolk County's district courts, which continue to churn through minor cases and disrupt people's lives with time in jail, punitive conditions, and unnecessary, knee-jerk arrest warrants for court absences.

The Suffolk County District Attorney's Office is still actively prosecuting people for the 15 crimes DA Rollins pledged to decline. 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. 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 have now published six weeks of data analysis. As of our date of publication, DA Rollins has already been in office for more than eight 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. Further, we know that her office is not presently tracking data to be able to remedy the harm done over her first 2 months.

DA Rollins recently announced that her office will be holding quarterly town halls to share reports out of the office, answer community questions, and take suggestions. The first town hall is scheduled for March 28, 2019.

This effort at transparency and community engagement is a positive step, but if DA Rollins aims to run a transparent office she must: (1) publish SCDAO internal data, (2) publicly issue office policy, and (3) put in place a plan to make policy retroactive by revisiting all prosecutions her office undertook over her first two months.

We're waiting. And we'll be watching.