

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: SECOND DEPARTMENT

----- X
THE PEOPLE OF THE STATE OF NEW YORK :
 :
EX. Rel. PHILIP DESGRANGES, ESQ. ON :
BEHALF OF CHRISTOPHER KUNKELI :
 :
Petitioner, :
 :
 v. :
 :
ADRIAN BUTCH ANDERSON, Dutchess County :
Sheriff, :
 :
 :
 :
Respondent. :
----- X

**AFFIDAVIT OF
MICHELLE SHAMES
IN SUPPORT OF
PETITION FOR WRIT
OF HABEAS CORPUS**

App. Div. Docket No.
2018-346

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

I, Michelle Shames, being duly sworn, depose and say:

1. I am employed as a Data and Policy Analyst at the New York Civil Liberties Union (“NYCLU”). I hold a Master’s Degree in Sociology from McGill University, where I received extensive statistical training at the graduate level. As such, I make this affidavit in support of Christopher Kunkeli’s petition for a Writ of Habeas Corpus challenging his pretrial detention at the Dutchess County jail.
2. I am fully familiar with the facts and circumstances surrounding the data analysis in this action. All facts stated in this affidavit are true and correct to the best of my knowledge. If called upon to testify, I would do so competently.

DATA SOURCE & DETAILS

3. The numerical statements presented in paragraphs 9 through 20 were calculated using a dataset of information on all pretrial detainees admitted to the Dutchess County Jail between January 1, 2010 and November 27, 2017 (hereinafter an “eight-year period”).
4. The dataset analyzed was requested on November 11, 2017 as a follow-up to a previous Freedom of Information Law (FOIL) request made by the NYCLU on April 1, 2016. (The November 11, 2017 request is attached as Exhibit A.) On November 28, 2017, I received an Excel spreadsheet from a Dutchess County Jail official that included all of the information requested. (An excerpt of the dataset is attached as Exhibit B.) The dataset includes the following fields of information for each pretrial detainee admitted to the Dutchess County Jail during the eight-year period established in paragraph 3:
 - a. Date and time of booking (admission), arraignment, status change¹, and release;
 - b. Age, race, gender, zip code;
 - c. Number of charges associated with admission and number of warrants on file;
 - d. Top charge², statute, description, category, and class;

¹ Status change date was provided for individuals who changed from pretrial to another status (e.g. sentenced).

- e. Total bail and total bond amounts set;
 - f. Total bail and total bond amounts posted as well as payment type; and
 - g. Reason for release.
5. I made the following modifications to the dataset before analyzing it:
- a. One entry was excluded from the dataset because the release date preceded the admission date and was therefore assumed to be an erroneous entry.
 - b. All entries listing any of the following charges were excluded from the dataset because these charges present unique factors that could unfairly skew the analysis: Violations of probation/parole/conditional release; Fugitive; Escape; Unspecified violations of family court act; and Court orders/punishments. (A more detailed explanation of why each charge was excluded and with which frequency is attached as Exhibit C.)
 - c. All individuals for whom no release date was provided were assumed to have still been in custody at the time the dataset was produced. There were 264 individuals for whom no release date was provided. Consequently, I assigned the release date of November 27, 2017 to each of these individuals. This was the most recent release date

² The following explanation was provided by Dutchess County Jail regarding the manner in which “top charge” was determined for the data production: “Over the lifecycle of a Jail Booking, the designation of "Top Charge" changes. We detailed the FIRST charge recorded, on the assumption that the Booking Officers would use the most-serious offense. Deviation from this assumed procedure is occasionally observed.”

captured in the data and therefore the earliest possible date on which any of these individuals could have been released. As such, the length of stay calculated for each of these individuals is likely an underestimate.

6. For the purpose of this document, any use of the term “length of stay” refers to the number of calendar days after the admission date that an individual spent in the Dutchess County Jail as a pretrial detainee. For individuals who maintained pretrial status on the date of their release, length of stay was calculated by subtracting admission date from release date. For individuals who experienced a status change while in custody, length of stay was calculated by subtracting admission date from status change date.
7. For the purpose of this document, individuals who are referred to as having had a bail amount set in their case are those for whom the “total bail amount,” as listed in the raw data, was greater than \$10.00. As such, six individuals with a bail amount between \$1.00 and \$10.00 were not counted as having had bail set in their case.³
8. Please note that all but two individuals with a set bond amount had a set bail amount, whereas 217 individuals who had a set bail amount did not have a set bond amount. As such, bail was considered to be more consistently set

³ These individuals were excluded to account for the common judicial practice of setting nominal bail in a defendant’s case if the defendant is ineligible for release for another reason.

than bond, and was thus chosen as the variable of focus in paragraphs 9 through 20.

ANALYSIS

9. During the eight-year period I reviewed, 18,461 individuals who were admitted to the Dutchess County Jail pretrial had bail set in their case. Of those, 13,701 individuals (74%) spent one or more days, 8,507 individuals (46%) spent one or more weeks, and 5,007 (27%) spent one or more months as a pretrial detainee in the Dutchess County Jail as a result of not posting bail.
10. Of the 13,701 pretrial detainees with bail set in their case who spent one or more days in custody, 8,250 (60.2%) had a misdemeanor, and 411 (3%) had a violation, as their top charge. A complete breakdown of the number and proportion of individuals by top charge category is attached as Exhibit D.
11. Over the eight years I reviewed, individuals with a misdemeanor as their top charge have accounted for an increasing proportion (53% in 2010 increasing to 60% in 2017) of pretrial detainees with a set bail who spent one or more days in the Dutchess County Jail. A breakdown of the proportion of individuals by top charge category over time is attached as Exhibit E.
12. Of the 13,701 pretrial detainees with set bail who spent one or more days in the Dutchess County Jail, the mean length of stay was 41 days.

13. Of the 8,250 pretrial detainees with set bail who spent one or more days in the Dutchess County Jail and had a misdemeanor as their top charge, the mean bail amount set was \$9,517 and the mean length of stay was 32 days.
14. Of pretrial detainees with set bail who spent one or more days in the Dutchess County Jail, Petit Larceny (n=1,856) and misdemeanor level Criminal Possession of a Controlled Substance (n=966) were the two most common top charges. Pretrial detainees with either of these two top charges accounted for 21% of pretrial detainees with set bail who spent one or more days in the Dutchess County Jail, and 34% of those who had a misdemeanor as a top charge. The mean length of stay for pretrial detainees with set bail who spent one or more days in the Dutchess County Jail and had Petit Larceny as their top charge was 30 days, and for those with a misdemeanor Criminal Possession of a Controlled Substance was 35 days.
15. Of the 411 pretrial detainees with a set bail who spent one or more days in the Dutchess County Jail and had a violation as their top charge, the mean bail amount set was \$3,081 and the mean length of stay was 16 days.
16. The most common violation as a top charge was Disorderly Conduct (n=154), which accounted for 37% of cases where a violation was the top charge. The mean length of stay for pretrial detainees with set bail who spent one or more days in the Dutchess County Jail and had Disorderly Conduct as their top charge was 21 days.

17. In the eight-year period under review, 684 pretrial detainees spent seven or more days, 262 spent 30 or more days, and 83 spent 90 or more days in custody on a set bail of \$500 or less.

18. In the eight-year period under review, 1,395 pretrial detainees spent seven or more days, 555 spent 30 or more days, and 170 spent 90 or more days in custody on a set bail of \$1,000 or less.

19. In the eight-year period under review, 2,338 pretrial detainees spent seven or more days, 999 spent 30 or more days, and 285 spent 90 or more days in custody on a set bail of \$2,500 or less.

20. In the eight-year period under review, 583 pretrial detainees spent 180 or more days in custody on a set bail. Of these, 14% (79 individuals) had a bail of \$2,500 or less and 10% (58 individuals) had a bail of \$1,000 or less.

(A chart capturing the number of pretrial detainees, their set bail amounts, and their lengths of stay as discussed in paragraphs 17-20 is attached as Exhibit F.)

ADDITIONAL DATA SOURCES

21. In addition to the dataset obtained from Dutchess County via FOIL request, Philip Desgranges, a senior staff attorney at the NYCLU, received a data table via email from the Dutchess County Probation Office on December 8, 2017. This table includes the number of pretrial detainees between 2010-2017 who were screened, interviewed, and released through pretrial services,

as well as the number of these individuals who later failed to appear in court. Philip Desgranges forwarded this table to me via email. (A reproduction of the email is attached as Exhibit G. Please note that the format differs slightly from the original in order to increase clarity.)


22. According to the data described in paragraph 21, of the 7,897 individuals who were released through pretrial services, 379 individuals (4.8%) later failed to appear in court.

I certify under penalty of perjury that the foregoing is true and correct.

Dated: January 8th, 2018

Michelle Skames

Sworn to before me this 8
day of January, 2018


Notary Public

KRISTEN ALEEN BURZYNSKI
Notary Public, State of New York
Reg. No. 02BU6364474
Qualified in Kings County County
Commission Expires 09/18/2021

Exhibit A



NYCLU

NEW YORK CIVIL LIBERTIES UNION

125 Broad Street
New York, NY 10004
Ph: 212.607.3300
Fax: 212.607.3329
www.nyclu.org

Michelle Shames
Data and Policy Analyst
Direct: 212-607-3379
mshames@nyclu.org

November 6, 2017

By Electronic Mail

Officer Daniel Roth

Dutchess County Jail

Droth@dutchessny.gov

Re: Freedom of Information Law Request

Dear Officer Roth or Current Jail FOIL officer,

The New York Civil Liberties Union ("NYCLU") is filing this request for records pursuant to the New York Freedom of Information Law, Article Six of the Public Officers Law.

The NYCLU requests a database of all pretrial detainees held in Dutchess County Jail from 2010 to the present, disaggregated by individual admission to the jail, and with the following fields of data:

- a. Admission or booking date
- b. Age or date of birth
- c. Race
- d. Gender
- e. Zip code
- f. Charge/arraignment date
- g. Number of charges
- h. Top offense charge section
- i. Top offense charge description
- j. Top charge type (e.g., felony, misdemeanor, violation)
- k. Top charge class (e.g., A, B, C, D)
- l. Total set bail amount(s)
- m. Total paid bail amount(s)
- n. Bail form(s) (e.g. cash bail, bond, credit card)
- o. Warrants or other holds
- p. Release or discharge date
- q. Status change date if an individual changed from pre-trial to sentenced
- r. Release or discharge reason (e.g. posted bail, released on recognizance, released under supervision, case resolved). For the reasons "released by court order" and "case resolved," please provide the specific reasons (e.g. case resolved: sentenced, or release by court order: posted bail)

Please provide the records requested in an electronic spreadsheet or comma-separated format (Excel or CSV). Please also provide a codebook or explanation file of all abbreviations or acronyms used in the database (e.g. for bail types, discharge codes).

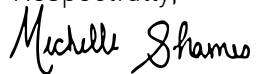
Please furnish the requested records to:

Michelle Shames
New York Civil Liberties Union
125 Broad St, 19th Floor
New York NY 10004
mshames@nyclu.org

If any portion of this request is denied for any reason, please inform me of the reasons for denial in writing and provide the name and address of the person or body to whom an appeal should be directed.

Please do not hesitate to contact me if you have any questions about this request. Thank you for your prompt attention.

Respectfully,



Michelle Shames
Data and Policy Analyst
mshames@nyclu.org
212-607-3379

Exhibit B

A1	B	C	D	E	F	G	H	I	J	K
	<u>Booking Date</u>	<u>Age at Admission</u>	<u>D.O.B.</u>	<u>Race</u>	<u>Gender</u>	<u>Zip</u>	<u>Arraignment Date</u>	<u>Num. Charges</u>	<u>Statute</u>	<u>ChargeDesc</u>
3	01/11/2010 11:39	18	3/14/1991	White	Male	12581	01/11/2010 11:54	2	PL 170.25 DF2	POSSESS FORGED INSTRUMENT- 2ND
4	01/11/2010 13:35	30	7/12/1979	White	Male	12571	01/11/2010 13:51	1	PL 145.05 EF3	CRIMINAL MISCHIEF - 3RD
5	01/11/2010 17:02	17	10/11/1992	White	Male	12603	01/11/2010 16:27	2	PL 145.00 AM4	CRIMINAL MISCHIEF - 4
6	01/12/2010 17:44	57	9/14/1952	Black	Male	12601	01/12/2010 17:51	1	PL 155.25 AM0	PETIT LARCENY
7	01/12/2010 19:15	46	3/19/1963	White	Male	12601	01/12/2010 19:19	1	PL 155.25 AM0	PETIT LARCENY
8	01/13/2010 17:34	31	10/16/1978	White	Male	12601	01/13/2010 17:41	1	PL 155.25 AM0	PETIT LARCENY
9	01/13/2010 17:46	28	6/6/1981	White	Male	12508	01/13/2010 15:00	1	PL 120.15 BM3	MENACING 3RD
10	01/13/2010 17:49	34	10/19/1975	White	Male	12601	01/13/2010 17:57	1	PL 155.25 AM0	PETIT LARCENY
11	01/13/2010 18:29	26	5/8/1983	White	Male	12601	01/13/2010 18:33	1	VTL1192 03 UM0	DRIVING WHILE INTOXICATED- 1ST OFFENSE
12	01/14/2010 09:10	22	7/17/1987	Black	Male	12601	01/14/2010 09:19	1	PL 155.25 AM0	PETIT LARCENY
13	01/14/2010 12:36	23	11/26/1986	White	Female	12590	01/14/2010 12:42	1	PL 170.10 DF2	ATTEMPTED FORGERY-2ND
14	01/14/2010 15:12	45	4/3/1964	Black	Female	12208	01/14/2010 15:21	1	FCA0454 3A 90	RESPONDENT COMMITTED TO JAIL- FAIL TO OBEY ORDER OF SUPPORT
15	01/14/2010 17:16	39	1/13/1971	White	Male	12550	01/14/2010 17:23	2	PL 155.25 AM0	PETIT LARCENY
16	01/15/2010 11:21	50	5/31/1959	Black	Male	12601	01/15/2010 11:29	1	PL 120.00 AM3	ASSAULT -3RD
17	01/15/2010 11:22	25	4/29/1984	Black	Male	12601	01/15/2010 12:04	1	PL 220.03 AM7	CRIM POSS CONTRL SUBST
18	01/15/2010 11:34	25	12/1/1984	White	Male	12561	01/15/2010 11:42	1	PL 155.25 AM0	PETIT LARCENY
19	01/15/2010 11:39	73	1/9/1937	Black	Male	12601	01/15/2010 11:58	1	PL 220.16 01 BF3	CRIM POSS NARCO DRUG INT/SELL
20	01/15/2010 13:16	39	6/28/1970	White	Male		01/16/2010 13:37	2	PL 215.51 B EF1	CRIMINAL CONTEMPT-1ST: VIOLATE ORDER OF PROTECTION
21	01/17/2010 01:45	43	11/21/1966	White	Male	12567	01/17/2010 01:55	1	PL 145.00 AM4	CRIMINAL MISCHIEF - 4
22	01/17/2010 11:14	32	11/8/1977	Black	Male	12603	01/17/2010 11:21	1	PL 265.02 DF3	CRIMINAL POSSESSION WEAPON - 3RD DEGREE
23	12/20/2016 14:49	19	7/20/1997	Black	Male	12601	12/21/2016 09:00	2	PL 260.10 AM0	ENDANGERING WELFARE OF CHILD
24	12/20/2016 16:13	40	1/29/1976	Asian / Pacific Islander	Male	12601	12/20/2016 16:17	1	PL 220.16 BF3	CRIM POSS CONTR SUBST
25	12/20/2016 17:31	41	9/16/1975	White	Male		12/20/2016 17:35	1	PL 240.20 V0	DISORDERLY CONDUCT
26	12/20/2016 20:09	24	3/3/1992	White	Male	12533	12/20/2016 20:12	1	PL 155.25 AM0	PETIT LARCENY
27	12/21/2016 08:20	31	3/23/1985	White	Male		12/21/2016 08:00	3	PL 220.03 AM7	CRIM POSS CONTRL SUBST
28	12/21/2016 22:04	33	3/14/1983	White	Male	10453	12/21/2016 22:06	1	PL 215.50 AM2	CRIMINAL CONTEMPT 2ND
29	12/21/2016 23:19	23	12/13/1993	Black	Male	12572	12/21/2016 23:00	1	PL 240.75 EF0	AGGRAVATED FAMILY OFFENSE - MORE THAN 1 OFFENSE WITHIN 5 YRS
30	12/22/2016 09:48	33	3/11/1983	White	Male	12601	12/22/2016 09:00	1	PL 121.11 AM0	CRIMINAL OBSTRUCTION OF BREATHING OR BLOOD CIRCULATION

1	L	M	N	O	P	Q	R	S	T	U	V
2	Charge Category	Charge Class	Total Bail	Total Bond	Total Bail Posted	Total Bond Posted	Pay Types	Warrants Filed	Release Date	Status Change Date	Release Reason
3	F	D	\$1,000	\$5,000	\$0	\$0		0	02/16/2010 13:49		Probation (T/H)
4	F	E	\$1,000	\$1,000	\$0	\$1,000	Bond	0	01/12/2010 16:34		Bond
5	M	A	\$1,500	\$2,000	\$1,500	\$0	Cash	0	02/06/2010 21:46		Bail
6	M	A	\$1,000	\$1,000	\$0	\$1,000	Bond	0	01/14/2010 14:04		Bond
7	M	A	\$2,500	\$5,000	\$0	\$5,000	Bond	0	01/14/2010 14:10		Bond
8	M	A	\$500	\$1,000	\$0	\$0		0	02/08/2010 17:52		Court Ordered Rel
9	M	B	\$500	\$500	\$500	\$0	Cash	0	02/01/2010 10:59		Bail
10	M	A	\$10,000	\$20,000	\$0	\$0		0	01/26/2010 19:15	01/26/2010 18:55	Sentence Expiration
11	M	U	\$5,000	\$5,000	\$0	\$0		0	03/09/2010 14:30		Probation (E/M)
12	M	A	\$5,000	\$5,000	\$0	\$0		0	02/11/2010 09:46		Probation (E/M)
13	F	E	\$10,000	\$10,000	\$0	\$0		0	01/26/2010 14:57		Probation (T/H)
14	9		\$500		\$0	\$0		0	01/21/2010 20:33	01/19/2010 15:52	Bail
15	M	A	\$1,000	\$1,000	\$0	\$0		0	03/25/2010 15:29	03/09/2010 19:20	Sentence Expiration
16	M	A	\$5,000	\$5,000	\$0	\$0		0	02/03/2010 12:17		Court Ordered Rel
17	M	A	\$2,500	\$2,500	\$0	\$2,500	Bond	0	01/19/2010 19:12		Bond
18	M	A	\$1,000	\$1,000	\$0	\$0		0	01/22/2010 12:07		Court Ordered Rel
19	F	B	\$10,000	\$10,000	\$10,000	\$0	Bond	0	02/02/2010 15:14		Bond
20	F	E	\$3,500	\$6,000	\$0	\$3,500	Cash	0	01/27/2010 17:02		Bail
21	M	A	\$500	\$500	\$0	\$0		0	01/28/2010 12:41		Court Ordered Rel
22	F	D	\$500	\$5,000	\$500	\$0	Cash	0	02/11/2010 12:48		Bail
23	M	A	\$20,000	\$40,000	\$0	\$0		0	03/01/2017 06:04	01/12/2017 12:17	Sentence Expiration
24	F	B	\$25,000	\$50,000	\$0	\$0		1	12/23/2016 18:17		Court Ordered Rel
25	V		\$1,000	\$2,000	\$0	\$0		0	12/27/2016 11:28		Court Ordered Rel
26	M	A	\$10,000	\$20,000	\$10,000	\$0	Cash	0	12/23/2016 12:29		Bail
27	M	A	\$10,000	\$25,000	\$0	\$0		0	05/11/2017 13:30	03/16/2017 19:48	Other
28	M	A	\$2,500	\$5,000	\$0	\$0		0	12/23/2016 14:48		Court Ordered Rel
29	F	E	\$5,000	\$10,000	\$0	\$0		0	04/20/2017 13:53		Court Ordered Rel
30	M	A	\$5,000	\$10,000	\$0	\$0		0	01/17/2017 19:36		Court Ordered Rel

Exhibit C

EXHIBIT C: Charges excluded from dataset

<u>Charge</u>	<u>Frequency</u>
<u>Fugitive and escape charges:</u> These charges were excluded because the nature of the charges indicates that the individual charged either was already committed or was fleeing commitment from custody as the result of another charge of which the nature is not known.	
Attempted Escape-3rd	1
Escape-2nd	1
Escape-3rd	6
Fug/Jus-In-F	3
Fug/Jus-Out-F	14
Fug/Jus-Out-M	1
Fugitive From Justice - In State Crime	1
Fugitive From Justice - Out Of State Crime	10
<u>Violations of probation/parole/conditional release:</u> These charges were excluded because the person charged may have a hold for the alleged violation, which would confine him/her to jail whether or not he/she can afford to post bail.	
Attempted Viol Prob-M	1
Family Offense- Court Places Respondent On Probation	1
Revoke Presumptive Release, Parole, Cond Release, Prs Status	124
Viol Prob-F	21
Viol Prob-V	21
Viol Prob-M	97
Violate Condition Of Sentence-Probation/Cond Discharge	1
<u>Court orders/punishments:</u> These charges were excluded because they involve an order of confinement whether or not the individual charged can afford to post bail.	
Attempted Respondent Committed To Jail-Fail To Obey Order Of Support	1
Court Punishment For Criminal Contempt	1
Defendant To Appear In Court For Delinquency Determination	5
Officer Fails To Bring Arrestee To Court/Extradition Warrant	1
Respondent Committed To Jail-Fail To Obey Order Of Support	18
Warrant-Fail To Obey Child Support Order	3
<u>Unspecified charges:</u> This charge was excluded due to the unknown nature of the charge.	
Unspecified Violation Of Family Court Act	44
Sum Total	376

Exhibit D

EXHIBIT D: Distribution by top charge category of pretrial detainees with a set bail who spent one or more days in custody.

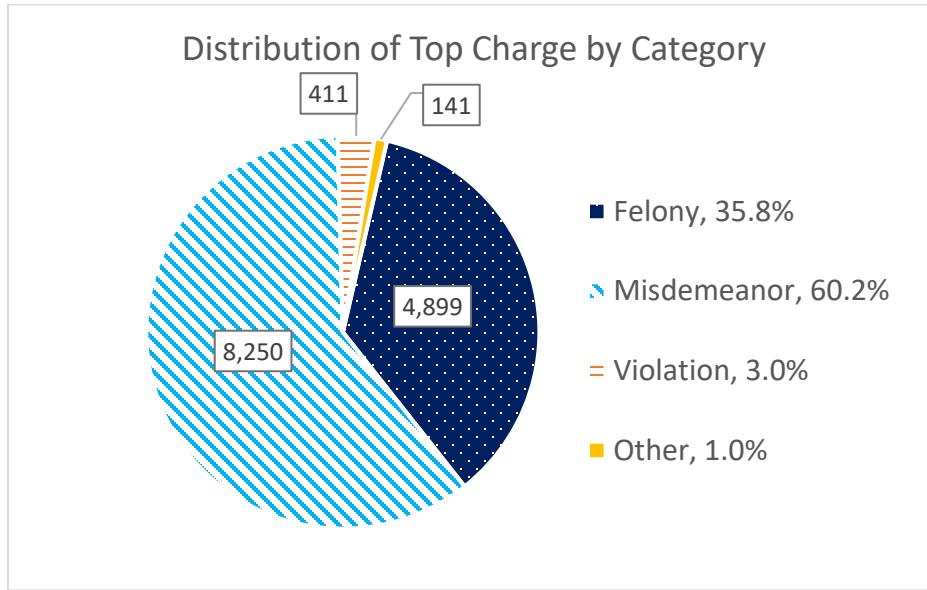


Exhibit E

EXHIBIT E: Distribution of individuals with a set bail who spent one or more days in custody by top charge category over time.

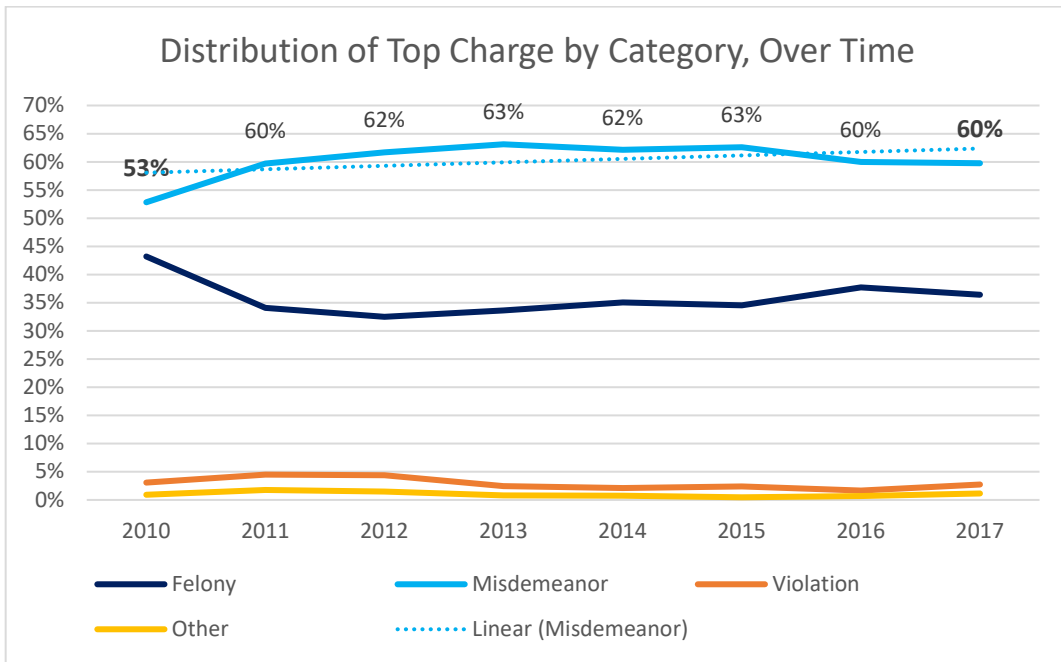


Exhibit F

EXHIBIT F: Number of pretrial detainees by set bail amount & length of stay.

LOS	Total	1+ Days	7+ Days	30+ Days	90+ Days	180+ Days	1 year +
All Bails	18,461	13,701	8,507	5,007	1,926	583	105
2,500\$ or less	8,757	5,160	2,338	999	285	79	19
1,000\$ or less	6,190	3,342	1,395	555	170	58	15
500\$ or less	3,861	1,832	684	262	83	30	10

Exhibit G

EXHIBIT G: Number of pretrial detainees in Dutchess County released by pretrial services, and number of those released via pre-trial services who then failed to appear in court.

Pretrial Services	2010	2011	2012	2013	2014	2015	2016	2017	Total
Screened	2,515	2,518	2,682	2,614	2,460	2,343	2,417	2,374	19,923
Interviewed	2,211	2,003	2,127	2,134	1,969	1,834	1,926	1,927	16,131
Released	979	937	1,018	967	1,024	997	1,007	968	7,897
ROR	512	501	602	565	581	564	582	561	4,468
RUS	443	391	409	390	430	421	410	388	3,282
Other	12	5	7	12	12	12	13	16	89
BE	12	40	0	0	1	0	2	3	58
Failed to Appear	56	42	40	36	47	44	54	60	379

The following text was provided alongside the table:

- “Screened is the total number we reviewed. It is smaller than the Interviewed category as some people declined to be interviewed or bailed out.
- Released means released into one of Probation’s pretrial programs.
 - o ROR are those individuals ROR’d to Probation. Probation monitors their court appearances and stays in touch with them during the pendency of the case.
 - o RUS refers to those individuals who have conditions, other than making court appearances, attached to their release. This would include Electronic Monitoring and other special programs.
 - o Other refers to the small number of cases that are not placed into a particular program.
 - o BE is Bail Expediting that Pretrial Services sometimes facilitates.
- Finally, FTA is Failure to Appear for those individuals placed in one of the programs available through Pretrial Services.”