



Secured Bond

November 4, 2021



Study Methodology

- Staff examined the use of secured bond as part of the continuing study on the pretrial process by:
 - Conducting a review of relevant literature;
 - Examining Virginia bail statutes;
 - Analyzing statewide Virginia data;
 - Identifying bail reform measures in other states; and,
 - Surveying numerous practitioners.



Bail Conditions in Virginia

- When a person is charged with a crime and not released on a summons, bail conditions may include a:
 - Personal Recognizance (PR) bond
 - Unsecured bond
 - Secured bond – cash, property, or a surety



Key Findings

- **Key Finding 1:** Virginia is in a unique position to examine its pretrial system as a result of the Virginia Pre-Trial Data Project.
 - The Project dataset can inform policy decisions.
 - Limited scope (October 2017)
 - Pre-COVID-19 pandemic
 - Pre-criminal justice reforms
 - The Project dataset cannot explain the “why” behind the data.



Key Findings

- **Key Finding 2:** While several other states have enacted bail reform measures, various factors present challenges to ascertaining the specific impacts of these reforms, such as:
 - No state has completely eliminated secured bond;
 - Several states implemented bail reform measures and then repealed or modified those reforms;
 - Recentness of reform measures;
 - Lack of complete or reliable data;
 - COVID-19 pandemic; and,
 - Overall rise in crime rates.

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5



Key Findings

- **Key Finding 3:** The statewide analysis of the Project dataset showed that most defendants were ultimately released prior to trial.
 - Of the 11,487 defendants in the statewide analysis:
 - 83% (9,503) released during the pretrial period
 - 17% (1,984) detained the entire pretrial period

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6



Key Findings

➤ Key Finding 3 (cont.):

- The majority of those defendants were released on a PR or unsecured bond.
- Of the 9,503 released defendants:
 - 56% (5,364) released on PR or unsecured bond
 - 44% (4,139) released on secured bond



Key Findings

➤ Key Finding 3 (cont.):

- The large majority of defendants who were released appeared in court.
- Of the 9,503 released defendants:
 - 86% (8,149) not charged with failure to appear
 - 14% (1,354) charged with failure to appear



Key Findings

➤ Key Finding 3 (cont.):

- The majority of defendants who were released were not arrested for a new in-state criminal offense during the pretrial period.
- Of the 9,503 released defendants:
 - 76% (7,204) not arrested for new in-state offense
 - 24% (2,299) arrested for a new in-state offense
 - 88% were arrested for an in-state misdemeanor



Key Findings

➤ Key Finding 4: Bail determinations are not based solely on the nature of the current criminal charge.

- Decisions are made on a case-by-case basis using various statutory criteria.
 - Many factors contribute to a person's risk of failure to appear and risk to public safety.
- A person charged with a minor offense may have a high risk of failure to appear or risk to public safety.



Key Findings

- **Key Finding 5:** Magistrates and judges have broad discretion when setting bail conditions.
 - Various bail conditions can be imposed in order to ensure court appearance and good behavior pending trial.



Key Findings

- **Key Finding 6:** The Virginia Code favors setting bail, but does not guarantee pretrial release.
 - Magistrates and judges must set bail unless there is probable cause to believe that:
 - The person will not appear in court; or,
 - The person's release constitutes an "unreasonable danger" to that individual or the public.



Key Findings

- **Key Finding 7:** The statewide analysis found that many of the defendants released during the pretrial period were indigent.
 - *At least 51% (2,708 of 5,364) of defendants who were released on a PR or unsecured bond were indigent.*
 - *At least 62% (2,559 of 4,139) of defendants who were released on secured bond were indigent.*



Key Findings

- **Key Finding 8:** The statewide analysis found that many of the defendants detained the entire pretrial period were indigent.
 - *At least 78% (1,551 of 1,984) of defendants who were detained the entire pretrial period were indigent.*
 - Defendants may remain detained for a variety of reasons, such as being held without bail, an inability to afford the secured bond, lack of access to resources, or personal decisions.



Key Findings

- **Key Finding 9:** Bail bondsmen and pretrial services agencies serve unique roles and can be complimentary.
 - 25% (1,019 of 4,139) of defendants in the statewide analysis who were released on secured bond also received pretrial services agency supervision as a condition of bail.



Key Findings

- **Key Finding 9 (cont.):**
 - Staff's 2019 statewide analysis found that public safety outcomes were identical across defendants released on:
 - PR or unsecured bond with pretrial services agency supervision;
 - Secured bond only; and,
 - Secured bond with pretrial services agency supervision.
 - However, court appearance rates were higher for the group of defendants released on secured bond *with* pretrial services agency supervision.



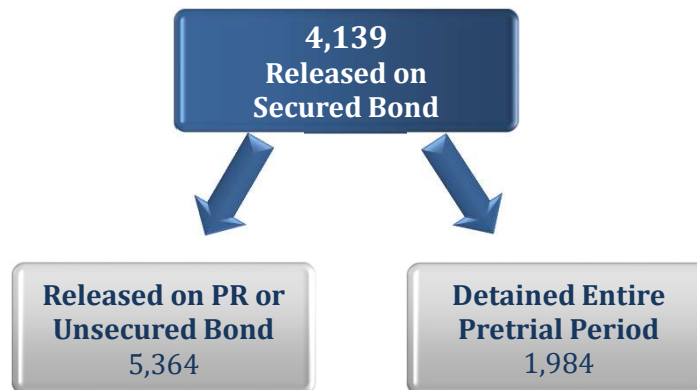
Key Findings

- **Key Finding 10:** The potential impacts of bail reform in Virginia are unknown.
 - Staff surveyed numerous practitioners in Virginia in an effort to identify any potential impacts that could stem from imposing restrictions on the use of secured bond.



Key Findings

- **Key Finding 10 (cont.):**
 - Will pretrial detention rates be impacted?





Key Findings

➤ Key Finding 10 (cont.):

- Will court appearance rates be impacted?
- Will public safety rates be impacted?
- Will other bail conditions, such as pretrial services agency supervision and electronic monitoring, be utilized more frequently?
- What additional resources will be required?



Policy Options



Policy Options

- **Policy Option:** Should Virginia Code § 19.2-123 be amended to eliminate the requirement that a secured bond must be set when a person is arrested for a felony AND:
 - Criteria 1: has a previous felony conviction; OR,
 - Criteria 2: is on bond for an unrelated arrest; OR,
 - Criteria 3: is currently on probation or parole.
- The Commonwealth's Attorney must concur in order to set a PR or unsecured bond.



Policy Options

- 21% (2,373 of 11,487) of defendants in the Project dataset were arrested for a felony and met the criteria set forth in Virginia Code § 19.2-123.

§ 19.2-123 Criteria	Number of Defendants
Criteria 1	1,182
Criteria 2	8
Criteria 3	246
Criteria 1 and 2	4
Criteria 1 and 3	922
Criteria 2 and 3	2
Criteria 1, 2, and 3	9
TOTAL DEFENDANTS	2,373



Policy Options

- The most serious current felony offense categories for the 2,373 defendants who were arrested for a felony and met the criteria set forth in Virginia Code § 19.2-123:

Felony Offense Category	Number of Defendants	% Total
Narcotics	765	32%
Larceny	522	22%
Assault	251	11%
Fraud	143	6%
Weapon	122	5%
<i>All Other Offenses</i>	<i>570</i>	<i>24%</i>
TOTAL DEFENDANTS	2,373	100%



Policy Options

- 89% (2,117 of 2,373) of defendants who were arrested for a felony had a prior felony conviction (Criteria 1):
 - 65% (1,375 of 2,117) had a prior felony conviction within the past 5 years; and,
 - 35% (742 of 2,117) had a prior felony conviction older than 5 years.



Policy Options

- When compared to all defendants in the statewide analysis, the defendants who met the criteria set forth in Virginia Code § 19.2-123 had much higher risk levels for failure to appear and new criminal activity.
- When compared to all released defendants in the statewide analysis, the released defendants who met the criteria set forth in Virginia Code § 19.2-123 were charged with failure to appear and arrested for new in-state offenses at higher rates.



Policy Options

- The pretrial release status of the 2,373 defendants who were arrested for a felony and met the criteria set forth in Virginia Code § 19.2-123 was as follows:
 - 47% (1,127 of 2,373) released on secured bond.
 - Median bond amount was \$2,500.
 - 39% (930 of 2,373) remained detained.
 - 13% (316 of 2,373) released on PR/unsecured bond.



Additional Policy Options

- Create a presumption of release without financial conditions?
- Require the use of least restrictive bail conditions?
- Make broader systematic changes to promote pretrial release?



Discussion