

VIRGINIA STATE CRIME COMMISSION



Secured Bond

2021 ANNUAL REPORT

SECURED BOND

EXECUTIVE SUMMARY

The Executive Committee of the Crime Commission directed staff to examine the use of secured bond in Virginia and to provide options to reduce pretrial detention rates across the Commonwealth. Secured bond means that a financial condition must be satisfied before a person is released from detention prior to trial.

Staff determined the Virginia Code could be amended to restrict the use of secured bond; however, staff was unable to determine the impacts that restricting the use of secured bond may have on pretrial detention rates, court appearance rates, public safety rates, the use of other bond conditions, and resource needs across Virginia. Staff further determined that the Virginia Code could be amended to create a presumption of release without financial conditions or to explicitly require that judicial officers order the least restrictive conditions when determining bail; however, the impacts of these amendments are also unknown. Finally, staff noted that Virginia could explore broader changes across the criminal justice system in an effort to promote pretrial release.

These amendments to the Virginia Code, along with the potential impacts, were based on numerous sources of information, including literature on bail and secured bond, Virginia law, the dataset from the *Project*, bail reform measures and bail processes in other states, and a survey of pretrial system stakeholders in Virginia.

Staff provided Crime Commission members with four policy options intended to address the bail process in Virginia. Members made no motions on any of the following options:

Policy Option 1: 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 (i) has a previous felony conviction; or, (ii) is on bond for an unrelated arrest; or, (iii) is currently on probation or parole?

Policy Option 2: Should the Virginia Code be amended to create a presumption of release without financial conditions?

Policy Option 3: Should the Virginia Code be amended to explicitly require that judicial officers order the least restrictive conditions when determining bail?

Policy Option 4: Should broader systematic changes be made across the criminal justice system to promote pretrial release?

BACKGROUND

The Crime Commission began studying pretrial services agencies in 2016.¹ This study was expanded in 2017 to include an examination of the entire pretrial process.² The expansion of the study ultimately led to the development of the *Project*.³ In 2021, the Executive Committee of the Crime Commission directed staff to examine the use of secured bond in Virginia and provide options to reduce pretrial detention rates across the Commonwealth. Secured bond means that a financial condition must be satisfied before a person is released from detention prior to trial.⁴

For purposes of this study, staff primarily focused on three concepts: (1) restrictions on the use of secured bond, (2) presumption of release without financial conditions, and (3) least restrictive conditions. For purposes of this report, these concepts are defined as follows:

- Restrictions on the use of secured bond: legal restrictions that explicitly prohibit judicial officers from ordering a financial condition as a term of a defendant's bond.
- Presumption of release without financial conditions: the legal presumption that financial conditions should not be imposed as a condition of bond unless a judicial officer determines that a defendant is a flight risk or poses a danger to public safety.
- Least restrictive conditions: the legal requirement that a judicial officer must only order the least restrictive conditions necessary to ensure a defendant's appearance in court and to protect public safety when setting the terms of bond.⁵

Crime Commission staff engaged in a variety of activities as part of the study on secured bond, including (i) collecting relevant literature on matters relating to pretrial detention, bail reform, and bail determinations, (ii) reviewing provisions of the Virginia Code related to bail and the pretrial process, (iii) analyzing data from the *Project*, (iv) identifying recent changes to bail processes in other states, (v) reviewing bail laws and processes in other states, (vi) examining relevant pretrial detention data from other states, and (vii) surveying key stakeholders in Virginia.

LITERATURE OVERVIEW

A brief overview of research pertaining to national pretrial detention trends, bail reform efforts, and the general bail determination process is detailed below. This research provides a foundation for the specific bail processes in Virginia and other states as described later in this report.

Pretrial Detention Trends

Pretrial detention rates have grown significantly over the past 40 years.⁶ When specifically examining local jail populations, data shows that a sizeable portion is comprised of persons who have not yet been convicted of an offense.⁷ Since 2005, inmates detained prior to trial have accounted for nearly two-thirds of the total local jail population in the United States.⁸ Specifically, in 2019, 65% (480,700 of 734,500) of inmates in local jails were being held prior to trial.⁹

For decades, advocates for bail reform have voiced significant concerns about the bail system and pretrial detention rates in the United States.¹⁰ Furthermore, research has consistently demonstrated the negative consequences of being detained prior to trial. In particular, research has shown that those detained prior to trial are more likely to plead guilty, be convicted, be sentenced to longer periods of incarceration, and be unable to adequately prepare a defense.¹¹ Moreover, being detained prior to trial has been shown to negatively impact employment, future earnings, relationships with dependent children, and residential stability.¹² Researchers have also found that differences exist in both bail determinations and rates of pretrial detention across race, ethnicity, gender, and socioeconomic status.¹³ Finally, the impact on jail capacities and the costs associated with excessive pretrial detention are also well documented in the literature.¹⁴

Bail Reform in the United States

The general goal of the bail system in the United States is to (i) release as many defendants as possible prior to trial so as to ensure that punishment is not unnecessarily imposed before a conviction, (ii) reduce failure to appear rates, and (iii) ensure that the public is protected from danger during the pretrial period.¹⁵ Advocates for the current bail system contend that the current bail system reduces failures to appear and protects the public from crimes committed by defendants who are released prior to trial.¹⁶ Conversely, critics argue that the current bail system:

- disadvantages poor individuals;
- disadvantages minority individuals, specifically Black and Hispanic defendants;
- increases mass incarceration;
- does not ensure that individuals appear for court;
- does not reduce pretrial criminal conduct; and,
- burdens taxpayers and state budgets with costs relating to pretrial detention.¹⁷

Historically, the focus of bail reform has been on reducing pretrial detention rates and lessening the socioeconomic and racial disparities that exist in the pretrial system, without increasing failures to appear or new criminal activity rates during the pretrial period.¹⁸

Bail reform in the United States has occurred in three distinct waves over the past 60 years. The first wave of bail reform occurred during the 1960s and emerged simultaneously with the civil rights movement and the “war on poverty.”¹⁹ Due to criticisms regarding the effectiveness of secured bond and the increase in secured bond amounts, advocates of bail reform sought to end over-detention by increasing the use of unsecured release and release on recognizance, along with limiting the use of money bail (secured bond).²⁰ Moreover, advocates pushed for the individualization of bail determinations, where personal factors such as employment, housing, and neighborhood of residence were taken into consideration for purposes of release determinations and pretrial “fact-finding.”²¹ The changes that occurred during the first wave of reform led to the establishment of the first pretrial services agencies, which gathered defendants’ personal information to assist in pretrial release recommendations.²² The reform movement of the 1960s concluded with the passage of the Bail Reform Act of 1966.²³ This 1966 Act focused on court appearance by creating a presumption that defendants charged with non-capital offenses should be released on their own recognizance, except when such release would not adequately ensure a defendant’s appearance in court.²⁴ Furthermore, the 1966 Act provided that alternative least restrictive conditions were to be ordered when concerns existed that an individual might not appear at trial if released on a personal recognizance bond.²⁵

The second wave of bail reform was ushered in during the 1970s and 1980s.²⁶ Prompted by rising crime rates, concerns about public safety, and sentiments regarding the commission of violent crime by those released prior to trial, reformers sought to shift the focus of the bail system to the protection of society from those individuals who were released prior to trial.²⁷ Congress passed the Bail Reform Act of 1984, which was part of the Comprehensive Crime Control Act that codified the detention of individuals who posed a flight risk or a danger to

public safety.²⁸ This change to federal bail policy was influenced by the “war on drugs” and “tough on crime” initiatives.²⁹ This 1984 Act amended the Bail Reform Act of 1966 by allowing the inclusion of “dangerousness” as a factor to be considered when determining bail.³⁰ The 1984 Act also permitted judicial officers to consider community safety when determining whether a defendant should be detained prior to trial.³¹ Further, the 1984 Act established a “rebuttable presumption toward confinement” when a defendant was charged with certain types of offenses, such as violent crimes or serious drug crimes.³² The 1984 Act also provided judicial officers with four options when ordering bond: (1) release on unsecured or personal recognizance bond, (2) release with conditions, (3) temporary detainment of an individual in certain situations, and (4) detainment of an individual for the entire period prior to trial.³³ This second wave of bail reform has been criticized generally for the racial underpinnings of the changes to bail policy and specifically for the inclusion of “dangerousness” in bail determinations.³⁴

The United States is currently in what is considered the third wave of bail reform.³⁵ Reformers are attempting to end the racial and socioeconomic inequities that exist in the criminal justice system through a decreased reliance on secured bond.³⁶ The debate relating to the use of secured bond is similar to the arguments in support of and in opposition to the overall bail system. Proponents argue secured bond ensures court appearance and decreases the threat to public safety;³⁷ whereas, critics contend that secured bond has disparate impacts across socioeconomic status, race, and ethnicity.³⁸

Despite these concerns, secured bond remains a frequently used bond condition in a majority of states.³⁹ Specific jurisdictions, such as Cook County (Illinois),⁴⁰ New Jersey,⁴¹ Harris County (Texas),⁴² Prince George’s County (Maryland),⁴³ and the District of Columbia⁴⁴ have begun to evaluate how reducing the reliance on secured bond has impacted overall bail determinations, failure to appear rates, new criminal activity, jail capacity, and resources. Ultimately, research examining the impact of bond type on court appearance and public safety rates has provided mixed results.⁴⁵

Alternatives to secured bond have been adopted in numerous states across the country through legislative changes, constitutional amendments, and court decisions.⁴⁶ Although these alternatives vary by state, such efforts typically include considering a defendant’s ability to post a secured bond as part of the bail determination process, increasing the use of risk assessment tools, restricting the use of bail schedules, expanding law enforcement’s authority to release defendants after an arrest (i.e., release on summons), and placing greater

emphasis on the danger that a defendant may pose to public safety, as opposed their risk of failure to appear, when determining bail.⁴⁷ While many alternatives to secured bond have been proposed and implemented, there is a lack of empirical research evaluating the implementation and outcomes of such practices.⁴⁸

Bail Determination Process

If a defendant is detained and not released on a summons, the bail process begins with a judicial officer making a bail determination. When making bail determinations, judicial officers act as “pretrial gatekeepers”⁴⁹ after a defendant is arrested and processed into the criminal justice system.⁵⁰ The purpose of the bail determination is to ensure that the defendant, if released, will return to court and will not be a threat to public safety.⁵¹ Scholars have sought to understand the process of how bail determinations are made, as judicial officers wield a considerable amount of discretion when making such determinations.⁵² A number of factors related to the defendant are typically considered by a judicial officer when making a bail determination, such as:

- nature and seriousness of the alleged offense;
- prior criminal history record;
- court appearance history;
- community ties;
- employment and/or family obligation status;
- threat to public safety;
- risk of flight; and,
- risk assessment tool results.⁵³

Research has classified such factors as being either legal or extralegal. Legal factors may include prior criminal history record and severity of the offense, while extralegal factors may include demographic information such as race, ethnicity, and gender.⁵⁴ Research studies have examined the specific impact of legal factors on judicial release decisions and found the strongest legal factors that impacted whether an individual was released or detained were the severity of the current offense and the individual’s prior criminal history record.⁵⁵ Specifically, individuals with more extensive criminal history records who were charged with serious crimes had a higher probability of being detained prior to trial.⁵⁶

On the other hand, research examining extralegal factors indicates disparities in how often judges release or detain similarly situated defendants across demographic factors such as

race and ethnicity, with Black and Hispanic defendants more likely to be detained without bond as compared to White defendants.⁵⁷ Similarly, research also found disparities in how often judges choose to release similarly situated defendants on non-financial conditions versus financial conditions, with Black and Hispanic defendants more likely to be ordered to post a secured bond with higher bond amounts as compared to White defendants.⁵⁸ Further, research has found that Black and Hispanic defendants post a secured bond less frequently as compared to similarly situated White defendants.⁵⁹

Role of Risk Assessment Tools

No conversation relating to the bail system is complete without a discussion of pretrial risk assessment tools. With calls to reform the current bail system and decrease jail overcrowding, many jurisdictions are considering the best ways to make or inform pretrial release decisions.⁶⁰ As such, the use of pretrial risk assessments has become a key element in pretrial reform.⁶¹

Risk assessment tools are commonly used at various stages within the criminal justice system to assist in making decisions relating to individual defendants.⁶² Studies have consistently found that validated actuarial risk assessment tools combined with professional judgement produce better outcomes in terms of predictive validity than subjective professional judgement alone.⁶³ Pretrial risk assessment tools were first developed in the 1960s and have since been increasingly implemented across the United States at the federal, state, and local levels. These risk assessment tools are designed to primarily assist judicial officers in evaluating defendants' risk of failure to appear and risk to public safety, as well as to help alleviate implicit bias that can impact release decisions during the bail determination process.⁶⁴ Researchers suggest that risk assessment tools can be used to help inform release and detention decisions because these tools are created to consider both static and dynamic risk factors that have been shown to impact both failure to appear and public safety.⁶⁵ Static risk factors are those that do not change, such as current charge and prior record, while dynamic risk factors are those that can change over time, such as employment and ties to the community.⁶⁶

Recently, strong debates have arisen over the use of pretrial risk assessment tools.⁶⁷ Proponents argue that utilizing a pretrial risk assessment tool results in improved objectivity and fairness by reducing inconsistent or unpredictable decision-making by judicial officers.⁶⁸ Proponents also contend the use of these tools allows for the pretrial release of more defendants which reduces jail populations while still maintaining public safety.⁶⁹ Furthermore,

proponents also suggest pretrial risk assessment tools increase equity and fairness and enhance uniformity in decision-making.⁷⁰ Conversely, opponents argue risk assessment tools do not reliably predict pretrial outcomes. Moreover, opponents contend the use of such tools results in biased outcomes and reinforces disparities across certain racial, ethnic, and socioeconomic populations in the criminal justice system due to the reliance on data collected from a biased system (i.e., bias in – bias out).⁷¹ Further, opponents claim these tools reduce judicial discretion and result in increased pretrial detention.⁷²

Pretrial Release Outcomes

There are several factors that can impact court appearance and public safety outcomes, such as prior criminal history record, prior failures to appear, current offense type, additional pending charges, residential stability, strength of community ties, history of violence, and history of substance use.⁷³ Research has consistently found that prior criminal history, prior failures to appear, and current offense type are the most predictive factors of pretrial release failure.⁷⁴ For example, a meta-analysis sought to examine the relationship between various risk factors and numerous measures of pretrial failure, such as failures to appear, rearrests, and new crime pending case disposition.⁷⁵ Researchers found the factors most predictive of all the pretrial failure measures were a defendant's prior convictions, prior felonies, prior misdemeanors, juvenile arrests, and prior failures to appear.⁷⁶ This finding supports the use of these static factors in risk assessment tools, as these factors have been demonstrated to be the most predictive of pretrial failure. Furthermore, this finding is also consistent with the use of the legal factors that are of considerable importance in bail determinations made by judicial officials.⁷⁷

Bond Conditions

In addition to determining whether to release a defendant prior to trial, a judicial officer must also determine what, if any, bond conditions to impose upon such defendant's release. While the recent wave of bail reform has focused on the use of secured bond, other bond conditions can be ordered that may not require a financial condition to be satisfied before a person can be released from pretrial detention. These bond conditions may provide an alternative to secured bond, or may be ordered in conjunction with a secured bond, and can be tailored to address the concerns of failure to appear and public safety.⁷⁸ Aside from secured bond, other bond conditions that can be imposed upon a defendant during the pretrial period vary by jurisdiction and may include, but are not limited to, the following:

- maintain or seek employment or education;
- no contact with specific persons;
- ban from certain places;
- alcohol screening or drug testing;
- home electronic monitoring or GPS monitoring; or,
- supervision by a pretrial services agency.⁷⁹

Researchers emphasize the need for additional research regarding the effectiveness of specific bond conditions.⁸⁰ Evidence is mixed regarding the bond conditions that have been examined in terms of their effectiveness at reducing failures to appear or decreasing new criminal activity during the pretrial period.⁸¹ For instance, research has varied results pertaining to the impact either electronic monitoring⁸² or pretrial services agency supervision⁸³ has on court appearance and public safety rates.

Research emphasizes, however, that bond conditions should be associated with the charged conduct, commensurate to the defendant's risk of flight and new criminal activity prior to trial, and the least restrictive conditions possible to ensure court appearance and public safety.⁸⁴ As measures to reduce the use of secured bond are implemented, researchers and practitioners anticipate there may be an increase in other bond conditions imposed on defendants.⁸⁵ Concern exists that this practice may lead to the overuse of burdensome bond conditions, such as in-person reporting and electronic monitoring.⁸⁶ Bond conditions that involve electronic monitoring are of particular concern because research has pointed to the economic costs associated with electronic monitoring and the potential financial burden it places on defendants.⁸⁷

Aside from being burdensome, there is concern the overuse of these other bond conditions may also have negative impacts on defendants, especially those who are initially deemed a low risk of offending. For example, in the context of post-conviction probation, intensive supervision has been shown to *increase* recidivism among those offenders with a low risk of reoffending due to the burden of the number of conditions imposed.⁸⁸ Researchers note that bond conditions closely mirror the post-conviction conditions of probation, and therefore some researchers contend an increase in the number and types of bond conditions imposed can carry adverse collateral consequences for defendants released prior to trial.⁸⁹ As previously noted, a defendant can be ordered to adhere to a number of bond conditions prior to trial; however, few of these bond conditions have been evaluated in order to understand their

potential consequences on defendants, such as financial costs, social costs, and criminogenic impacts.⁹⁰

OVERVIEW OF VIRGINIA LAW

Staff conducted a comprehensive review of the components of Virginia law that relate to bail. The Virginia Code defines bail as “the pretrial release of a person from custody upon those terms and conditions specified by order of an appropriate judicial officer.”⁹¹ If a person is admitted to bail, it means that person has been released from custody on some type of bond pending trial. At the outset, it is important to note a judicial officer is not required to admit a defendant to bail and may order a defendant to be held without bail during the pretrial period.⁹² The following sections provide an overview of the bail process in Virginia.

Types of Bond

The Virginia Code allows for a person to be admitted to bail under three different types of bond, including recognizance bond (typically referred to as a “personal recognizance” or “PR” bond), unsecured bond, and secured bond.⁹³ Neither a recognizance bond nor an unsecured bond require a person to satisfy any financial conditions prior to being released from pretrial detention; however, secured bond requires certain financial conditions to be satisfied before a person can be released from pretrial detention.⁹⁴ A secured bond can be posted in three different manners: (1) posting the total amount of the bond in cash, (2) allowing the court to obtain a lien against real estate or personal property, or (3) through a surety on the bond.⁹⁵

Bond Conditions

If a person is granted bond, the Virginia Code allows a judicial officer to impose a variety of bond conditions.⁹⁶ Such bond conditions may include:

- supervision by a person, organization, or pretrial services agency;⁹⁷
- restrictions on where a person may live or travel;⁹⁸
- requirements to seek or maintain employment, maintain educational programming, avoid contact with the alleged victim and potential witnesses, comply with a curfew, refrain from possessing a firearm, refrain from excessive alcohol use or the use of any illegal narcotics, or submit to drug testing;⁹⁹
- placement on home electronic monitoring or GPS monitoring;¹⁰⁰ or,

- any other condition reasonably necessary to assure appearance at court and good behavior pending trial.¹⁰¹

Judicial Officers

For purposes of bail determinations, a judicial officer is defined as any magistrate, judge, or clerk or deputy clerk of any district or circuit court.¹⁰² While clerks are included in this definition, these individuals rarely make bail determinations in criminal cases. Thus, magistrates and judges are primarily responsible for making bail determinations on criminal charges in Virginia.

In Virginia, magistrates are considered judicial officers because they are granted various powers, such as the authority to issue process of arrest, issue search warrants, make bail determinations, issue civil warrants, administer oaths and take acknowledgments, act as conservators of the peace, and perform other acts or functions authorized by law.¹⁰³

Bail Determination Process

Assuming that probable cause exists to issue a criminal charge,¹⁰⁴ if a person is arrested and not released on a summons,¹⁰⁵ then the person must be brought before a judicial officer for a bail hearing “without unnecessary delay.”¹⁰⁶ Data from the *Project* revealed most defendants in Virginia who were arrested for a new criminal charge punishable by incarceration had their initial bail hearing before a magistrate.¹⁰⁷

If a magistrate or judge denies bail, requires excessive bond, or sets unreasonable bond conditions, the defendant may appeal that bail determination to the next higher court, all the way up to the Supreme Court of Virginia.¹⁰⁸ Similarly, the attorney for the Commonwealth may also appeal a bail determination in the same manner.¹⁰⁹

Criteria for Determining Bail

Magistrates and judges have broad discretion when determining bail and ordering bond conditions.¹¹⁰ While Virginia law grants broad discretion for the ultimate bail determination, the Virginia Code sets forth ten specific criteria that a judicial officer must consider when determining bail and ordering bond conditions, including:

- the nature and circumstances of the offense;
- whether a firearm was used in the offense;
- the weight of the evidence;
- the financial resources of the accused and their ability to pay a bond;

- the character of the accused, including family ties, employment, and education;
- length of residence in the community;
- criminal history record;
- past appearances or failures to appear at court proceedings;
- whether the person is likely to obstruct justice if released; and,
- any other relevant information about whether the person is unlikely to appear for court proceedings.¹¹¹

In addition, when the General Assembly repealed presumptions against bail from the Virginia Code during the 2021 Special Session I of the General Assembly, it added eight specific criteria that must also be considered by judicial officers when determining whether to hold a defendant without bail.¹¹² These eight specific criteria include:

- the nature and circumstances of the offense;
- whether a firearm was used in the offense;
- the weight of the evidence;
- the history of the accused in regard to family ties or employment, education, or medical, mental health, or substance abuse treatment;
- length of residence in, or other ties to, the community;
- criminal history record;
- past appearances or failures to appear at court proceedings; and,
- whether the person is likely to obstruct justice if released.¹¹³

Use of Secured Bond

The Virginia Code specifically authorizes judicial officers to impose a secured bond as a condition of release.¹¹⁴ The Virginia Code does not place any explicit restrictions on a judicial officer's authority to impose a secured bond. The only general limitation that applies to secured bond, as well as to any other bond conditions, is that it be reasonably fixed so as to ensure that the person appears in court and maintains good behavior pending trial.¹¹⁵

Presumption of Release

The Virginia Code contains language that favors pretrial release; however, the Code does not impose a presumption of release without financial conditions. Specifically, the Virginia Code provides that "a person who is held in custody pending trial...*shall* be admitted to bail by a

judicial officer, unless there is probable cause to believe that” the person will not appear in court or that the person poses an unreasonable danger to public safety.¹¹⁶

While this language favors pretrial release, it does not guarantee that a person will in fact be released during the pretrial period. For example, a person may be granted a secured bond; however, that person may remain detained for the entire pretrial period for a variety of reasons, such as an inability to afford a secured bond, lack of access to family or friends to post a secured bond, or a personal decision to remain in custody.

Least Restrictive Conditions

While judicial officers have broad discretion when ordering bond conditions, the Virginia Code repeatedly states that such conditions must be *reasonable* in order to ensure that the person appears in court and maintains good behavior pending trial.¹¹⁷ However, the Virginia Code does not define what constitutes a reasonable condition in relation to these two criteria.

Pretrial Services Agencies

The Pretrial Services Act authorizes the creation of pretrial services agencies.¹¹⁸ Localities may establish and operate these pretrial services agencies, subject to the standards prescribed by the Virginia Department of Criminal Justice Services (DCJS).¹¹⁹ If a locality establishes a pretrial services agency, that agency is required to:

- investigate and interview defendants who are detained prior to trial;
- present a pretrial investigation report to the court;
- supervise defendants who were ordered to pretrial services as a condition of bond;
- conduct random drug and alcohol tests on defendants who are under supervision and for whom a judicial officer has ordered such testing;
- seek a *capias* for the arrest of a supervised defendant if that defendant’s actions present a risk of flight or a risk to public safety;
- seek a show cause for the defendant to appear before the court for noncompliance with supervision;
- provide information to law-enforcement to assist with locating defendants for whom a *capias* has been issued; and,
- keep records as required by the DCJS.¹²⁰

In addition to the duties mandated by the Virginia Code, pretrial services agencies *may* also:

- request that a person charged with a crime voluntarily submit to drug or alcohol testing for use by a judicial officer when determining conditions of release;
- facilitate the placement of defendants in substance abuse education or treatment programs or services;
- sign for the custody of a defendant as a condition of an unsecured bond;
- provide defendant information and investigative services for defendants prior to a bail hearing before a magistrate;
- supervise defendants placed on home electronic monitoring as a condition of bond;
- prepare financial eligibility statements for interviewed defendants for purposes of determining whether that defendant is indigent; and,
- coordinate certain services for foreign-language speaking and deaf or hard-of-hearing defendants.¹²¹

Bail Bondsmen

Bail bondsmen have a significant presence in Virginia’s pretrial system.¹²² Bail bondsmen are licensed by DCJS and are subject to certain professional standards of conduct.¹²³ There are three types of bail bondsmen in Virginia, including surety bail bondsmen, property bail bondsmen, and agents of property bail bondsmen.¹²⁴ Bail bondsmen serve to assist with satisfying the financial condition of a secured bond so a defendant can be released prior to trial. A surety bail bondsman will serve as a surety on the secured bond, while a property bail bondsman (or their agent) will pledge real property, cash, or certificates of deposit as the security for a secured bond.¹²⁵ In exchange for these services, bail bondsmen may charge a fee of not less than 10% but not more than 15% of the amount of the secured bond.¹²⁶ If a defendant fails to appear before the court as required, the court may order the bail bondsman on the case to forfeit the amount of the secured bond.¹²⁷

As noted in the Crime Commission’s 2018 Annual Report, bail bondsmen:

- view their primary role as ensuring a defendant’s appearance at court proceedings;
- do not routinely supervise the other bond conditions imposed by judicial officers;
- rely heavily on family, friends, and acquaintances of a defendant to ensure court appearance; and,
- will guarantee the appearance of a defendant who resides either in-state or out-of-state.¹²⁸

RELEVANT FINDINGS FROM THE *VIRGINIA PRE-TRIAL PROJECT*

Virginia is in a unique position to examine its pretrial system as a result of the *Project*,¹²⁹ which is one of the most comprehensive collections of pretrial data in the nation. While this comprehensive dataset can be used to inform policy decisions related to the pretrial process, it is important to note that the dataset cannot explain the “why” behind the data. For example, the *Project* dataset can provide the number of individuals who were charged with failure to appear, but it cannot explain “why” they did not appear for their court hearing. Additionally, the *Project*’s initial dataset is limited to a one-month time period (October 2017), which pre-dates the COVID-19 pandemic and other criminal justice reforms in Virginia.¹³⁰

The *Project* identified 11,487 defendants who were charged with a new criminal offense punishable by incarceration during October 2017 where the bail determination was made by a judicial officer. A statewide descriptive analysis was conducted for these 11,487 defendants across a wide variety of measures. The following statewide descriptive findings were relevant to the issue of bail determinations and the use of secured bond.

Pretrial Release and Bond Type

The statewide descriptive analysis showed most defendants were ultimately released prior to trial. As seen in Table 1, the data revealed 83% (9,503 of 11,487) of defendants were released during the pretrial period.

Table 1: Pre-Trial Release Status of Defendants in Cohort

	Number of Defendants	Percentage
Released During Pre-Trial Period (“Released”)	9,503	83%
Detained Entire Pre-Trial Period (“Detained”)	1,984	17%
Total Defendants	11,487	100%

Source: Virginia Pre-Trial Data Project. Analysis completed by VSCC staff.

Furthermore, the statewide descriptive analysis showed the majority of defendants who were released during the pretrial period were granted a personal recognizance or unsecured bond. As seen in Table 2, the data revealed 56% (5,364 of 9,503) of defendants were released on a PR or unsecured bond.

Table 2: Bond Type at Release for Defendants in Cohort

	Number of Defendants	Percentage
Released on Personal Recognizance or Unsecured Bond	5,364	56%
Released on Secured Bond	4,139	44%
Total Defendants	9,503	100%

Source: Virginia Pre-Trial Data Project. Analysis completed by VSCC staff.

Court Appearance and Public Safety Outcomes

The statewide descriptive analysis showed the vast majority of defendants who were released prior to trial (any bond type) appeared in court. As seen in Table 3, the data revealed 86% (8,149 of 9,503) of these defendants were not charged with failure to appear during the pretrial period.

Table 3: Statewide Court Appearance Outcomes for Released Defendants

	Number of Defendants	Percentage
Charged with Failure to Appear		
Yes	1,354	14%
No	8,149	86%
Total Defendants	9,503	100%

Source: Virginia Pre-Trial Data Project. Analysis completed by VSCC staff.

Additionally, the statewide descriptive analysis showed the majority of defendants who were released prior to trial (any bond type) were not arrested for a new in-state criminal offense punishable by incarceration during the pretrial period. As seen in Table 4, the data revealed 76% (7,204 of 9,503) of these defendants were not arrested for a new in-state offense punishable by incarceration.¹³¹

Table 4: Statewide Public Safety Outcomes for Released Defendants

	Number of Defendants	Percentage
Arrested for Any New In-State Offense Punishable by Incarceration		
Yes	2,299	24%
No	7,204	76%
Total Defendants	9,503	100%

Source: Virginia Pre-Trial Data Project. Analysis completed by VSCC staff.

Indigency

In order to qualify for court-appointed counsel, a court must find that a defendant is indigent based on certain income and asset guidelines.¹³² The statewide descriptive analysis showed *at least* 59% (6,818 of 11,487) of the defendants were indigent, regardless of final pre-trial release status.¹³³

The statewide descriptive analysis found many of the 9,503 defendants who were released during the pretrial period were indigent, with a specific breakdown by bond type as follows:

- *at least* 51% (2,708 of 5,364) of defendants who were released on PR or unsecured bond were indigent; and,
- *at least* 62% (2,559 of 4,139) of defendants who were released on secured bond were indigent.

Similarly, the statewide descriptive analysis also found many of the defendants who were detained the entire pretrial period were indigent. At least 78% (1,551 of 1,984) of detained defendants were identified as being indigent. As previously noted, the *Project* dataset cannot explain “why” these individuals were detained the entire pretrial period, as a defendant may remain detained for a variety of reasons, such as being held without bail, an inability to afford a secured bond, lack of access to family or friends to post a secured bond, or a personal decision to remain in custody.

Bail Bondsmen and Pretrial Services Agencies

As described above, bail bondsmen and pretrial services agencies serve unique roles in the pretrial system; however, these roles can be complimentary. Bail bondsmen typically engage with family and friends of a defendant and focus their efforts on ensuring a defendant appears in court, while pretrial services agencies directly supervise the defendant in an effort to ensure compliance with the bond conditions. The statewide descriptive analysis found 25% (1,019 of 4,139) of defendants who were released on secured bond were also placed under pretrial services agency supervision.

In addition to the most recent 2021 statewide descriptive analysis, staff previously used the *Project* dataset in 2019 to examine the public safety and court appearance outcomes across defendants ultimately released on (i) PR or unsecured bond only, (ii) PR or unsecured bond with pretrial services agency supervision, (iii) secured bond only, and (iv) secured bond with pretrial services agency supervision.¹³⁴ This 2019 analysis found defendants released on “PR

or unsecured bond only” had fewer new in-state arrests punishable by incarceration (higher public safety rates) than the groups of defendants released on “PR or unsecured with pretrial services agency supervision”, “secured bond only”, or “secured bond with pretrial services agency supervision.” When examining the latter three groups of defendants, the analysis showed the public safety outcomes were identical across all three groups. However, the analysis revealed the group of defendants released on a “secured bond with pretrial services agency supervision” had higher court appearance rates than not only the groups of defendants released on either “PR or unsecured bond with pretrial services agency supervision” or “secured bond only” but also the group of defendants released on “PR or unsecured bond only.”

BAIL PROCESSES IN OTHER STATES

Staff conducted a review of the bail processes in other states for two specific purposes. First, staff identified states that recently made changes to their bail processes and then attempted to ascertain the impacts of those reforms.¹³⁵ Second, while conducting this review of these changes, staff systematically took note of whether several specific concepts were present across states, such as restrictions on the use of secured bond, presumptions of release without financial conditions, and the use of least restrictive conditions. As a result of this review, staff worked to identify and compare states with these three different concepts in their statutes and/or court rules. The following is a summary of staff’s findings from the review of the bail processes in other states. Note that the classifications of states presented in this section are based on the definitions as provided in the “Background” section of this report.

Recent Bail Process Changes

As of November 2021, staff identified at least 24 states that had enacted measures to amend their bail processes within the last five years.¹³⁶ The nature of these reforms varied significantly. Some states enacted laws to restrict the use of secured bond and promote pretrial release, while other states moved in the opposite direction and passed legislation requiring the use of secured bond in certain instances. Additionally, some states enacted bail measures and then quickly scaled back or repealed those measures.

Staff identified at least 17 states that enacted measures meant to promote pretrial release within the past five years.¹³⁷ For example, in 2021, Maine eliminated the use of financial bond conditions for Class E crimes; however, that law contains six specific exceptions for when

financial conditions can still be imposed.¹³⁸ Furthermore, Maine added language to its Code to require judicial officers to consider a defendant's ability to afford a financial condition, maintain employment, provide caregiving responsibilities, and address specific health care needs when setting bail.¹³⁹ Similarly, in 2018, Vermont amended its Code to prohibit the use of secured bond for persons charged with an expungement-eligible misdemeanor offense;¹⁴⁰ however, if the person is a risk of flight, the court may impose a maximum bail amount of \$200.¹⁴¹

Conversely, at least two states passed laws within the last five years which expanded the use of secured bond for certain offenses. In 2021, Texas passed "The Damon Allen Act," which prohibits releasing a defendant on a personal (unsecured) bond if that defendant is either charged with a violent offense or charged with certain other offenses while on bail or community supervision for a violent offense.¹⁴² Similarly, in 2021 Alabama passed "Aniah's Law," which is a proposed constitutional amendment that will grant judges broader discretion to deny bail to defendants charged with committing violent crimes, provided that a prosecutor first makes a request that bail be denied.¹⁴³ Because this Alabama law proposes a constitutional amendment, it must first be approved by a statewide referendum before taking effect.¹⁴⁴ The referendum vote will be held in November 2022.

Finally, at least five states enacted bail measures meant to restrict the use of secured bond or promote pretrial release, but then scaled back or repealed those measures.¹⁴⁵ For example, in 2019, New York enacted legislation requiring the court to release a person on their own recognizance or with non-monetary conditions, unless that person was charged with a qualifying offense for which secured bond could be ordered.¹⁴⁶ However, after law enforcement and various public officials expressed concerns about this new legislation,¹⁴⁷ the New York legislature revised the measure in 2020 by adding several crimes to the list of qualifying offenses for which secured bond can be ordered, such as sex trafficking, money laundering, and grand larceny in the first degree.¹⁴⁸

Likewise, in 2016, Alaska passed legislation based on recommendations from the Alaska Criminal Justice Commission to create a new evidence-based pretrial release system and to eliminate secured bond for certain pretrial defendants.¹⁴⁹ However, in 2019, the newly elected Governor of Alaska signed a bill into law that effectively repealed many of these 2016 reforms,¹⁵⁰ such as eliminating the requirements to consider a defendant's pretrial risk assessment score and to find clear and convincing evidence before imposing secured bond.¹⁵¹

Impacts of Recent Bail Reforms

While several states amended their bail processes within the past five years, the specific impacts of those changes are difficult to determine. First, no state has completely eliminated the use of secured bond from its bail process. The Illinois legislature recently passed the Illinois Pretrial Fairness Act, making it the first state in the nation to enact legislation to eliminate the use of secured bond; however, the bail provisions of this Act do not take full effect until 2023.¹⁵² Second, as noted above, several states enacted and then scaled back or repealed bail legislation, making the impacts of those measures difficult to assess. Third, some measures were just recently enacted and therefore not enough time has passed to identify any specific impacts, such as the 2021 measures in Maine and Texas described above. Fourth, assessing the impacts of specific measures was difficult due to a lack of complete or reliable data in other states. Fifth, other external factors, such as a nationwide increase in the violent crime rate, posed obstacles to isolating the specific impacts of these measures.¹⁵³ Finally, the COVID-19 pandemic continues to have significant impacts across all of society, including the operations of the criminal justice systems in states and localities.

Nonetheless, staff was able to identify some reports on the impacts of recent changes to the bail processes in New Jersey, Prince George's County (Maryland), Cook County (Illinois), and Harris County (Texas). Initial findings relating to the impacts of these measures have thus far been mixed.

New Jersey

The use of monetary bail in New Jersey has been largely eliminated as a result of its 2017 Criminal Justice Reform (CJR) initiative.¹⁵⁴ Under this initiative, a pretrial risk assessment tool, the Public Safety Assessment (PSA), is used to classify a defendant's risk of new criminal activity and failure to appear for court and to provide a decision-making framework to inform release conditions. Defendants who are deemed a low-risk by the PSA are often released on a complaint-summons without being transported to jail, or are released on non-financial conditions set by the court, while defendants who are deemed high-risk by the PSA can be detained upon the motion of a prosecutor and an order from the court.¹⁵⁵ The 2019 Annual CJR report to the New Jersey Governor and the Legislature demonstrated similar court appearance and new criminal activity rates between those arrested and released prior to trial in 2018 versus those arrested and released prior to trial in 2017. Specifically, the pretrial court appearance rates for those arrested and released prior to trial in 2018 was 89.9% as

compared to 89.4% for those arrested and released prior to trial in 2017.¹⁵⁶ In terms of new criminal activity, the report found that 13.8% of those arrested and released in 2018 were charged with an indictable offense as compared to 13.7% of those arrested and released prior to trial in 2017.¹⁵⁷

Prince George's County, Maryland

In October 2016, Maryland Attorney General Brian E. Frosh sent a letter urging members of the Maryland Courts Standing Committee on Rules of Practice and Procedure to consider changes to Maryland Rule 4-216 in order to ensure judicial officers do not set financial conditions solely for the purpose of detaining a defendant.¹⁵⁸ In July 2017, new Maryland Rule 4-216.1 took effect with the intent of promoting the pretrial release of defendants on their own recognizance, or on an unsecured bond when necessary.¹⁵⁹ Despite this rule change, a June 2018 study of bail in Prince George's County, Maryland, found the pretrial jail population stayed the same, there was an increase in persons held without bond, and a disproportionate number of Black defendants were held prior to trial.¹⁶⁰

Cook County, Illinois

In 2017, General Order 18.8A (GO18.8A) was issued by the Chief Judge of the Circuit Court of Cook County, Illinois. This General Order established a presumption of release without monetary bail. For those required to post a monetary bail, lower bail amounts were encouraged and the order specified bail should be set at an amount affordable for the defendant. An evaluation was conducted to examine the impact of GO18.8A among felony defendants.¹⁶¹ After the issuance of GO18.8A, 57% of defendants received an I-Bond (personal recognizance bond), as compared to 26% of defendants before its passage. Additionally, 81% of defendants were released prior to trial with the passage of GO18.8A, as compared to 77% prior to its passage. When examining court appearance rates, GO18.8A was associated with an increase in the odds of failure to appear, with a failure to appear rate of 16.7% prior to the passage of the order and a 19.8% rate after passage. In analyzing public safety rates, GO18.8A was found to have no effect on the odds of new criminal activity of individuals released prior to trial, with a new criminal activity rate of 17.5% prior to the passage of the order and a 17.1% rate after passage. The Order was also found to have no effect on the odds of new violent criminal activity of individuals released pretrial, with a 3.0% rate prior to the passage of the order and 3.1% rate after passage.

Harris County, Texas

In February 2019, the amended Local Rule 9 of the Harris County Criminal Courts at Law was adopted which overturned the previous secured money bail schedule and required the immediate release of defendants arrested for misdemeanors on a personal bond or General Order Bond.¹⁶² This Rule also allows for individuals who are arrested for offenses that fall within six “carve-out” categories to be detained for up to 48 hours for an individualized bail hearing.¹⁶³ In November 2019, the ODonnell Consent Decree was approved to ensure Harris County follows Amended Local Rule 9.¹⁶⁴ In addition to incorporating Local Rule 9, the ODonnell Consent Decree also requires strong procedural protections during misdemeanor bail hearings, such as guaranteeing the right to counsel at bail hearings for all individuals who are charged with misdemeanors; improving release procedures, such as the implementation of a court notification system; and, increasing access to data relating to misdemeanor pretrial release decisions and defendant demographic information.¹⁶⁵ According to reports from the Court-Appointed Monitor of the consent decree, the implementation of Local Rule 9 led to a significant increase in the release of those arrested for misdemeanors.¹⁶⁶ Additionally, there has been a significant decrease in the number of individuals released on a secured bond.¹⁶⁷ In 2015, 92% of cases had a secured bond set as compared to 14% of cases in 2020.¹⁶⁸ Further, the rate of repeat offending slightly decreased after the implementation of Rule 9, with 20.5% of misdemeanor arrestees in 2019 repeat offending compared to 23.4% in 2015.¹⁶⁹ Moreover, Rule 9 narrowed the disparity between the proportion of Black and White defendants in pretrial detention and release.¹⁷⁰ This report also discussed the increase in violent crime such as homicides in Harris County.¹⁷¹ The report indicated no evidence could be found attributing the increase in homicides to bail reform due to changes in the bail process being restricted to misdemeanors.¹⁷² However, a report issued by the Harris County District Attorney’s Office found bail reform led to an increase in pretrial release, recidivism, bond failure, and violent crime.¹⁷³ Specifically, when examining offender-level recidivism rates, the annual recidivism rate increased to 20-23% after bail reform compared to 17-21% prior to bail reform.¹⁷⁴ Additionally, the report indicates a 50% increase in the overall bond failure rate.¹⁷⁵ Further, there was an increase in monthly offenses of all violent crime types within one to five months of the implementation of amended Local Rule 9.¹⁷⁶

Restrictions on the Use of Secured Bond

Staff sought to identify states that explicitly prohibit the use of secured bond for certain offenses either by statute or court rule. Staff identified at least seven states that explicitly restrict the use of secured bond in some manner.¹⁷⁷

These states have various restrictions on the use of secured bond. As previously noted, Illinois recently became the first state to enact legislation to eliminate the use of secured bond (effective 2023).¹⁷⁸ Similarly, New York requires the court to release defendants on their own recognizance or with non-monetary conditions, unless the defendant is charged with a qualifying offense for which use of a secured bond is permitted.¹⁷⁹

In Connecticut, a court cannot impose financial conditions of release for misdemeanor offenses, unless the charge is for family violence, the arrested person requests financial conditions, or the court makes a finding on the record that the person will likely fail to appear, obstruct justice, or threaten safety to themselves or another.¹⁸⁰

Presumption of Release without Financial Conditions

Staff sought to identify states that have adopted a presumption of release without financial conditions, unless the defendant poses a risk of flight or a danger to public safety. Staff identified at least 26 states with statutes or court rules that fit these criteria.¹⁸¹

States have implemented these presumptions of release without financial conditions in a variety of manners. Florida law creates a presumption in favor of release on nonmonetary conditions for any person who is granted pretrial release, unless that person is charged with a specific “dangerous crime.”¹⁸² Similarly, a person appearing before the court in Minnesota must be released on a personal recognizance or an unsecured appearance bond, unless the court determines that the person’s release will endanger public safety or will not reasonably assure their court appearance.¹⁸³ Additionally, in West Virginia, a person charged with a misdemeanor offense must be released on their own recognizance, unless (i) there is good cause shown why such person should not be released in this manner or (ii) the person is charged with certain misdemeanors that are exempted from the requirement.¹⁸⁴

Least Restrictive Conditions

Staff identified at least 21 states that require judicial officers to impose the least restrictive conditions when determining bail or setting bond conditions.¹⁸⁵ States vary widely in terms of

how these least restrictive conditions are applied. In Texas, a magistrate must impose the least restrictive conditions and bond necessary to reasonably ensure the defendant's appearance in court and the safety of the community, law enforcement, and the alleged victim.¹⁸⁶ Georgia law requires that when determining bail for a misdemeanor charge, courts not impose excessive bail and only impose conditions that are reasonably necessary to ensure court appearance and protect public safety.¹⁸⁷ In contrast, courts in Alabama "may impose the least onerous condition or conditions" reasonably necessary to ensure a defendant's appearance and eliminate or minimize the risk to public safety when setting the terms of bond.¹⁸⁸

POTENTIAL IMPACTS OF BAIL REFORM IN VIRGINIA

Staff examined literature, bail statutes in the Virginia Code, and bail processes in other states in an effort to determine the potential impacts of bail reform in Virginia. In addition, staff surveyed numerous pretrial system stakeholders in Virginia, including Commonwealth's Attorneys, Public Defenders, court-appointed counsel, judges, magistrates, pretrial services agency directors, and bail bondsmen, in an effort to identify any such impacts. Ultimately, staff determined the potential impacts of any bail reform measures in Virginia were unknown. However, these efforts raised five important questions about how bail reform would impact Virginia.

Will pretrial detention rates be impacted?

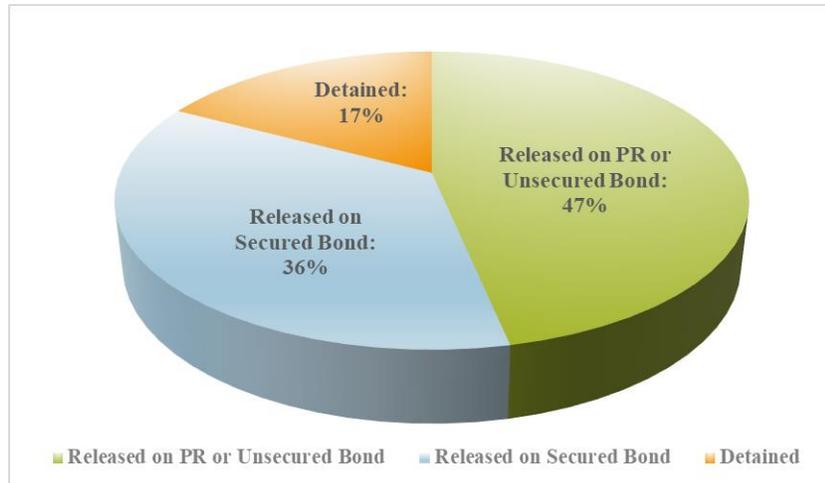
Pretrial defendants in Virginia ultimately fall into one of three pretrial release status categories: released on PR or unsecured bond (without financial conditions), released on secured bond (with financial conditions), or detained the entire pretrial period. The statewide analysis of the *Project* dataset showed that of the 11,487 defendants who were charged with a new criminal offense punishable by incarceration during October 2017 where the bail determination was made by a judicial officer:

- 47% (5,364 of 11,487) were released on a PR or unsecured bond;
- 36% (4,139 of 11,487) were released on a secured bond; and,
- 17% (1,984 of 11,487) were detained the entire period.

Chart 1 illustrates the pretrial release status classification of these 11,487 defendants in the *Project* cohort. Hypothetically, if Virginia were to enact any measures that restrict the use of secured bond, it is uncertain how many of the 4,139 defendants who were released on

secured bond would instead be released on a PR or unsecured bond, as opposed to being detained the entire pretrial period.

Chart 1: Pre-Trial Release Status of Defendants in Cohort



Source: Virginia Pre-Trial Data Project. Chart prepared by Crime Commission staff.

As previously noted, Virginia repealed all presumptions against bond from its bail statutes effective July 1, 2021.¹⁸⁹ Prior to the repeal of all of these presumptions, defendants who were charged with certain offenses had to produce evidence to overcome the legal presumption that they were a risk of flight or a danger to the community in order to be granted bond.¹⁹⁰ The amended statute eliminates these presumptions against bond and requires judicial officers to grant bond unless there is probable cause to believe that the defendant is a flight risk or poses a danger to public safety.¹⁹¹ Due to the recentness of this change to Virginia's bail statutes, the impacts of this new policy, if any, remain unknown. Similarly, if the General Assembly enacts any future changes to the bail process in Virginia, the impacts of those changes are likely to remain unknown until sufficient time has passed to observe and analyze any impacts.

Will court appearance rates be impacted?

As previously noted, the statewide analysis from the *Project* showed that of the 9,503 defendants released during the pretrial period in Virginia, 86% (8,149) were not charged with failure to appear. Additionally, as previously referenced, data showed that 92% (3,685 of 4,017) of defendants released on secured bond utilized the services of a bail bondsman. The primary stated purpose of these bail bondsmen is to ensure a defendant's court appearance. It is unknown how court appearance rates would be impacted if the General Assembly were to enact any bail reform measures.

Survey respondents expressed concerns that restricting or eliminating the use of secured bond could result in higher failure to appear rates, which may in turn lead to more continuances of criminal cases, multiple court dates for victims and witnesses, and the potential for increased detention rates amongst defendants who are charged with failure to appear and defendants who reside out-of-state.

Will public safety rates be impacted?

The 2021 statewide analysis of the *Project* showed that of the 9,503 defendants released during the pretrial period, 76% (7,204) were not arrested for a new in-state offense punishable by incarceration, while 24% (2,299) were arrested for such an offense. Additionally, as discussed earlier, staff's 2019 analysis of the *Project* dataset found identical public safety outcomes across defendants released on (i) PR or unsecured bond with pretrial services agency supervision, (ii) secured bond only, and (iii) secured bond with pretrial services agency supervision.¹⁹² As with court appearance rates, it is unknown how public safety rates would be impacted if the General Assembly were to enact any bail reform measures.

Will other bond conditions be used more frequently?

Survey respondents expressed concerns that measures to restrict or eliminate the use of secured bond could lead judicial officers to order other bond conditions more frequently, such as pretrial services agency supervision or electronic monitoring. Respondents worried that any increased use of such bond conditions could inadvertently create additional barriers to pretrial release for indigent defendants and defendants with limited access to resources. For example, defendants may not have the time or ability to travel and meet with a pretrial services agency, or they may not be able to afford the costs associated with electronic monitoring. Various concerns with over-conditioning were discussed in the "Literature Overview" section of this report.

Will additional resources be required?

The uncertainty of the answers to the first four questions posed in this section led survey respondents to raise additional questions about the potential resources required if any bail reform measures are enacted in Virginia. Respondents suggested that additional resources may be needed across various entities, such as:

- Law enforcement agencies: to locate defendants who fail to appear (both in- and out-of-state residents) and to serve witness subpoenas on cases that are continued when a defendant fails to appear.
- Local and regional jails: to house additional inmates if more defendants are initially detained prior to trial or are detained for the entire pretrial period.
- Pretrial services agencies: to increase caseload supervision capacity if more defendants are referred to pretrial services agency supervision as a condition of bond.

Until the impacts of any bail reform measures in Virginia become known, it will be very difficult to determine what, if any, additional resources these entities may need.

CRIME COMMISSION LEGISLATION

The Crime Commission met on November 4, 2021, and heard a presentation from staff on secured bond. At the conclusion of the presentation, staff provided members with four policy options to address the bail process in Virginia. No motions were made by Crime Commission members on these policy options.

Policy Option 1: 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 (i) has a previous felony conviction; or, (ii) is on bond for an unrelated arrest; or, (iii) is currently on probation or parole?

Staff identified Virginia Code § 19.2-123 as an instance in Virginia's bail statutes where the use of secured bond was mandated. Staff provided this policy option to Crime Commission members because data from the *Project* was available to help inform this policy decision. While such data was available, staff reiterated that the potential impacts of any amendments to Virginia Code § 19.2-123 were unknown.

Under Virginia Code § 19.2-123, if a magistrate or judge chooses to admit a person to bail, that magistrate or judge must order a secured bond in instances where that person is charged with a felony and meets any of the following criteria:

- has a previous felony conviction (Criteria 1); or,
- is currently on bond for an unrelated arrest (Criteria 2); or,
- is currently on probation or parole (Criteria 3).¹⁹³

While Virginia Code § 19.2-123 requires that a secured bond be ordered in these specific circumstances, the Code does allow a magistrate or judge to order a PR or unsecured bond with the agreement of the attorney for the Commonwealth.¹⁹⁴ Thus, in its current form, Virginia Code § 19.2-123 limits judicial officer discretion and allows the attorney for the Commonwealth to potentially override the bail determination of a magistrate or a judge.

Based on a review of the *Project* dataset, staff determined 21% (2,373 of 11,487) of defendants in the statewide descriptive analysis met at least one of the criteria for a secured bond as set forth in Virginia Code § 19.2-123. Table 5 provides a breakdown of these 2,373 defendants based upon the criteria requiring a secured bond as described above.

Table 5: Classification of Defendants in Cohort Meeting Virginia Code § 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

Source: Virginia Pre-Trial Data Project. Analysis completed by VSCC staff.

Staff next examined the most serious felony offense category in the contact event for each of the 2,373 defendants who met the criteria for a secured bond as set forth in Virginia Code § 19.2-123. As seen in Table 6, the most serious felony offense categories were narcotics, larceny, and assault.

Table 6: Most Serious Felony Offense for Defendants in Cohort Meeting Virginia Code § 19.2-123 Criteria

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

Source: Virginia Pre-Trial Data Project. Analysis completed by VSCC staff.

A review of the in-state criminal history records of the defendants who met the criteria for a secured bond as set forth in Virginia Code § 19.2-123 found 89% (2,117 of 2,373) had a prior in-state felony conviction. Further analysis revealed that of these 2,117 defendants:

- 65% (1,375 of 2,117) had a prior in-state felony conviction within the past 5 years; and,
- 35% (742 of 2,117) had a prior in-state felony conviction older than 5 years.

When compared to all defendants in the statewide descriptive analysis, the defendants who met the criteria for a secured bond as set forth in Virginia Code § 19.2-123 had much higher risk levels for failure to appear and new criminal activity as measured by the Public Safety Assessment (PSA). Similarly, when compared to all released defendants in the statewide descriptive analysis, the released defendants who met the criteria for a secured bond set forth in Virginia Code § 19.2-123 were charged with failure to appear and arrested for new in-state offenses at higher rates.

Finally, when examining the final pretrial release status of the 2,373 defendants who met the criteria for a secured bond as set forth in Virginia Code § 19.2-123, the *Project* dataset showed that ultimately:

- 47% (1,127 of 2,373) were released on secured bond;¹⁹⁵
- 39% (930 of 2,373) remained detained the entire pretrial period; and,
- 13% (316 of 2,373) were released on a PR or unsecured bond.

Policy Option 2: Should the Virginia Code be amended to create a presumption of release without financial conditions?

The concept of presumption of release without financial conditions has emerged as part of the discussion on the use of secured bond.¹⁹⁶ As previously mentioned, this concept is based on the premise that financial bail conditions should not be imposed if a person is not a flight risk or a risk to public safety. The key arguments in support of this concept are that it supports a presumption of innocence for those accused of a crime and that it is meant to reduce pretrial detention rates.¹⁹⁷

While the Virginia Code favors setting bail, it does not explicitly prohibit the use of secured bond when a person is not found to be a flight risk or to pose a danger to public safety.¹⁹⁸ Staff identified at least 26 states that have enacted a presumption of release without financial conditions for all or specific offenses, unless the defendant poses a risk of flight or a danger to public safety; however, these measures vary across states.¹⁹⁹

Staff was unable to determine what would occur if Virginia amended its current bail statutes to create a presumption of release without financial conditions. As seen in Table 1 above, the statewide descriptive analysis of the *Project* showed that most defendants were ultimately released prior to trial under Virginia's statutory framework. It is uncertain whether amending the Virginia Code in this manner would impact these pretrial release rates.

Policy Option 3: Should the Virginia Code be amended to explicitly require that judicial officers order the least restrictive conditions when determining bail?

Research indicates that bond, similar to other release conditions, should be the least restrictive option utilized to guarantee that an individual appears for court and maintains good behavior pending trial.²⁰⁰ "Least restrictive conditions" is a phrase related to the application of excessive bail.²⁰¹ Specifically, bail and bond conditions are to be set at a level to guarantee no more than "a constitutionally valid purpose for limiting pretrial freedom."²⁰² Furthermore, least restrictive conditions suggest bond conditions should only entail measures that are the least burdensome and inflict the least hardship on individuals.²⁰³ Thus, bond conditions are limited to requirements that will ensure court appearance and maintain public safety.²⁰⁴ The concept of least restrictive conditions is included in the American Bar Association criminal justice standards on pretrial release, federal and District of Columbia statutes, and other state statutes.²⁰⁵

While the Virginia Code does not specifically use the phrase "least restrictive conditions," the Code does provide that bond conditions must be reasonable in order to ensure the person appears in court and remains of good behavior pending trial.²⁰⁶ However, the Virginia Code also authorizes judicial officers to impose a wide variety of bond conditions, and it does not specify when these conditions may or may not be reasonable.²⁰⁷ Staff identified at least 21 states that have enacted least restrictive conditions as part of their bail processes; however, these states have not clearly defined what constitutes a least restrictive condition or how such conditions are to be applied.

Given that the Virginia Code currently contains a variation of the least restrictive conditions concept, the impacts of any amendments to the Code are unknown. Because bail determinations are made on a case-by-case basis, what constitutes a least restrictive condition will be a subjective decision for each magistrate and judge across the Commonwealth. Furthermore, this practice may impose a limit to judicial officer discretion

when a variety of bond conditions may be necessary to ensure court appearance, public safety, or both.

Policy Option 4: Should broader systematic changes be made across the criminal justice system to promote pretrial release in Virginia?

Restricting or eliminating the use of secured bond is not the only option available when considering ways to decrease pretrial detention rates. Various aspects of the criminal justice system can also be examined to determine potential approaches to reduce such rates. Staff identified the following areas that members could explore as part of a broader systematic change meant to decrease pretrial detention rates in the Commonwealth.

Amending the Virginia Code to allow for release on a summons for nonviolent felony offenses.

Law enforcement officers in Virginia are only authorized to release a person on a summons for a misdemeanor offense.²⁰⁸ When a law enforcement officer arrests a person for a felony offense, that person must be brought before a judicial officer and that person's fingerprints must be obtained.²⁰⁹ In recent years, bail reform advocates have promoted the concept of releasing more defendants on a summons for nonviolent misdemeanor and felony offenses.²¹⁰ Legislators could amend the law to allow law enforcement officers to release individuals charged with certain nonviolent felony offenses on a summons.

Utilizing technology to allow law enforcement officers to fingerprint defendants in the field.

In order for a criminal charge or conviction to appear on a person's criminal history record, an arrest report that includes the person's fingerprints must be submitted to the Central Criminal Records Exchange (CCRE).²¹¹ As part of the discussion on expanding release on a summons in Virginia, members may want to consider increasing law enforcement's ability to obtain fingerprints in the field so these charges appear on a person's criminal history record.

The Virginia State Police (VSP) launched an Electronic Summons System (E-Summons) pilot program in Northern Virginia on September 23, 2019.²¹² E-Summons is a mobile technology unit used by a state trooper to automate the traffic summons process in the field and to electronically transmit data to Virginia's general district courts.²¹³ While E-Summons does not include the capability to obtain a person's fingerprints at the time a summons is issued,

Virginia could examine adding these capabilities to the system and expanding its use across law enforcement agencies statewide. The General Assembly could look to the Virginia State Police Electronic Summons System Fund as one potential funding source for enhancing E-Summons and expanding its use statewide.²¹⁴

Implementing a non-interview based pre-trial risk assessment instrument for use by all magistrates and judges when making bail determinations.

The Virginia Code requires pretrial services agencies to investigate and interview pretrial defendants and to provide a pretrial investigation report to assist courts in bail determinations.²¹⁵

The Virginia Pretrial Risk Assessment Instrument (VPRAI) is the tool currently used by Virginia pretrial services agencies when preparing the pretrial investigation report.²¹⁶ The VPRAI provides information on a defendant's overall combined risk level for failure to appear and public safety.²¹⁷ In order to fully complete the VPRAI, an interview must be conducted with the defendant.²¹⁸ Crime Commission staff previously found thousands of defendants who were eligible for a pretrial investigation did not receive such an investigation, while simultaneously the majority of defendants referred for pretrial services agency supervision were referred by a judge without the benefit of a pretrial investigation.²¹⁹

One possible solution to ensure that as many eligible defendants as possible receive a pretrial investigation is through the use of a non-interview based pretrial risk assessment instrument. A representative from DCJS provided an update on pretrial services agencies at the November 15, 2021, meeting of the Crime Commission. The representative advised that DCJS will be engaging in a pilot of an alternative pretrial risk assessment tool, the Public Safety Assessment (PSA), in three sites (City of Richmond, Prince William County, and the combined County of Augusta and City of Staunton/Waynesboro) and will also be applying to the Advancing Pre-trial and Policy Research Organization (APPR) for technical assistance.

The PSA, unlike the VPRAI, does not require an interview with the defendant and is able to provide distinct risk levels of both failure to appear and new criminal activity, as well as note whether there is a risk of new violent criminal activity.²²⁰ Arizona, Kentucky, New Jersey, and Utah have implemented the PSA statewide.²²¹ DCJS can monitor the PSA pilot project and then make a determination as to whether the PSA should be utilized statewide in Virginia.²²²

Identifying and evaluating court notification programs.

Various jurisdictions across the country, including the cities of Richmond and Petersburg in Virginia, have engaged in the use of text notifications to remind defendants of their court dates.²²³ Such programs have been implemented in an effort to reduce jail occupancy and increase appearance in court.²²⁴ Research indicates failure to appear rates can be reduced if court hearing notifications are received by text message or phone call.²²⁵ However, while studies indicate court notification programs are effective at reducing failure to appear rates, future research should continue to examine the impact of the frequency of contact, contact techniques, and timeliness of contact on failure to appear rates.²²⁶ Virginia could identify court notification programs in the Commonwealth and other states and then evaluate the effect of these programs on failure to appear rates.

Expanding the availability pretrial services agency supervision.

As of March 2022, there were 35 pretrial services agencies serving 115 of Virginia's 133 cities and counties.²²⁷ Funding was provided in the 2020 Appropriations Act to expand the availability of pretrial services agencies in Virginia between 2020 and 2022.²²⁸ Virginia could consider further expanding the number of pretrial services agencies to cover more, or all, of the Commonwealth.

Other states are also expanding the capabilities of their pretrial services agencies. As mentioned previously, Illinois enacted legislation to eliminate the use of secured bond beginning in 2023.²²⁹ The Illinois Supreme Court formed a Pretrial Practices Implementation Task Force in July 2020 charged with helping the Supreme Court determine how to implement recommendations made in the final report of the Commission on Pretrial Practices released in April 2020.²³⁰ The Pretrial Practices Commission's final report pointed to the experiences of other states including New Jersey and New York, and concluded the first step in eliminating secured bond is establishing a robust and effective pretrial system and dedicating adequate resources to allow for evidence-based risk assessment and pretrial supervision.²³¹ Further, the Administrative Office of the Illinois Courts Office of Statewide Pretrial Services created a three-phased plan to implement a statewide pretrial services agency.²³²

Investing in diversion programs.

Crime Commission staff conducted a study on diversion in Virginia and other states over the past year. While this term has various definitions, staff defined diversion for purposes of the

study as an initiative or process (formal or informal) that allows an adult defendant to avoid a criminal charge and/or conviction by participating in or completing certain programs or conditions. Staff concluded legislation is not required to expand diversion across Virginia; however, such expansion will require additional and ongoing resources, communication and collaboration amongst stakeholders, and infrastructure for programs and supervision. A report on diversion is included in the Crime Commission's 2021 Annual Report.²³³

CONCLUSION

The Executive Committee of the Crime Commission directed staff to examine the use of secured bond in Virginia and to provide options to reduce pretrial detention rates across the Commonwealth. Staff determined the Virginia Code could be amended to restrict the use of secured bond; however, staff was unable to determine the impacts that restricting the use of secured bond may have on pretrial detention rates, court appearance rates, public safety rates, the use of other bond conditions, and resource needs across Virginia. Staff further determined that the Virginia Code could be amended to create a presumption of release without financial conditions or to explicitly require that judicial officers order the least restrictive conditions when determining bail; however, the impacts of these amendments are also unknown. Finally, staff noted that Virginia could explore broader changes across the criminal justice system in an effort to promote pretrial release.

ENDNOTES

- ¹ See Virginia Department of Criminal Justice Services. (2016, November 10). *Pretrial services agencies: Risk-informed pretrial decision making in the Commonwealth of Virginia*. Presentation to the Virginia State Crime Commission. Available at <http://vscc.virginia.gov/Virginia%20Pretrial%20Services%20Presentation%2012-5-2016.pdf>.
- ² See Virginia State Crime Commission. (2018). *2017 annual report: Pretrial services agencies*. Available at <http://vscc.virginia.gov/2018/2017%20Annual%20Report%20Pretrial.pdf>. See also Virginia State Crime Commission. (2019). *2018 annual report: Virginia Pre-Trial Data Project and pre-trial process*. Available at <http://vscc.virginia.gov/2019/VSCC%202018%20Annual%20Report%20-%20Pre-trial%20Data%20Project%20and%20Pre-trial%20Process.pdf>.
- ³ See Virginia State Crime Commission. (2021, September). *Virginia Pre-Trial Data Project*. Available at http://vscc.virginia.gov/VirginiaPretrialDataProject/VSCC%20PreTrial%20Data%20Project_Final%20Report.pdf.
- ⁴ See VA. CODE ANN. §§ 19.2-119 and 19.2-123(A)(2a) (2021).
- ⁵ See American Bar Association. *Criminal Justice Section Standards. Standard 10-1.2. Release under least restrictive conditions; diversion and other alternative release options*. Retrieved from https://www.americanbar.org/groups/criminal_justice/publications/criminal_justice_section_archive/crimjust_standards_pretrialrelease_bkl/. See also Pretrial Justice Institute. (2015). *Glossary of terms and phrases relating to bail and the pretrial release or detention decision*. Pretrial Justice Institute. Retrieved from <https://www.courts.wa.gov/subsite/mjc/docs/GlossaryofTerms.pdf>. Least restrictive conditions may also be referred to as other terms, such as least onerous conditions or least restrictive means.
- ⁶ See, e.g., Bureau of Justice Statistics. (1986, May). *Jail inmates, 1984*, at p. 2: Table 2 – Detention status of adult jail inmates, 1978, 1983, and 1984. Retrieved from <https://bjs.ojp.gov/content/pub/pdf/ji84.pdf>; Zeng, Z., & Minton, T.D. (2021, March). *Jail inmates in 2019*. Bureau of Justice Statistics, at p. 6: Table 4 - Percent of confined inmates in local jails, by characteristics, 2005, 2008, 2010, and 2015-2019. Retrieved from <https://bjs.ojp.gov/content/pub/pdf/ji19.pdf>; Dobbie, W., Goldin, J., & Yang, C. S. (2018). The effects of pretrial detention on conviction, future crime, and employment: Evidence from randomly assigned judges. *The American Economic Review*, 108(2), 201-240; For overall context on the total adult incarcerated population: Since 2010, approximately 2 million persons each year were incarcerated in local jails, state prisons, and federal prisons. See Bureau of Justice Statistics. (2022, March 22). *Number of persons supervised by adult correctional systems in the U.S., by correctional status, 1980-2020*. Data source: *Annual Probation Survey, Annual Survey of Jails, Census of Jails, and National Prisoner Statistics Program*. However, in 2020, the total incarcerated population dropped to 1.6 million. See Carson, E.A. (2021, December). *Prisoners in 2020 – Statistical Tables*, at p. 3: “The COVID-19 pandemic had significant effects on all stages of the criminal justice process, including state and federal correctional systems. In most states, courts significantly altered operations for part or all of 2020, leading to delays in trials and/or sentencing of persons and decreasing the overall number of admissions to prison. At the same time, states and the Federal Bureau of Prisons adopted an array of policies to mitigate transmission of COVID-19, including the suspension of transfers between prison facilities or from local jails to prisons; expedited releases of persons in prison based on their crimes, time served, and behavior; and releases to home confinement. All of these factors contributed to the 15% decline in the total U.S. prison population from yearend 2019 to yearend 2020 described in this report.”
- ⁷ See, e.g., Zeng, Z., & Minton, T.D. (2021, October). *Census of Jails, 2005–2019 – Statistical Tables*. Bureau of Justice Statistics. Note: “Unconvicted” is a term used by the Bureau of Justice Statistics and is defined as “awaiting court action on a current charge or held in jail for other reasons.”
- ⁸ Zeng, Z., & Minton, T.D. (2021, March). *Jail inmates in 2019*. Bureau of Justice Statistics, at p. 6: Table 4 - Percent of confined inmates in local jails, by characteristics, 2005, 2008, 2010, and 2015-2019. Retrieved from <https://bjs.ojp.gov/content/pub/pdf/ji19.pdf>.
- ⁹ Zeng, Z., & Minton, T.D. (2021 March). *Jail inmates in 2019*. Bureau of Justice Statistics, at p. 5: Table 3 - Number of confined inmates in local jails, by characteristics, 2005, 2008, 2010, and 2015-2019. Retrieved from <https://bjs.ojp.gov/content/pub/pdf/ji19.pdf>. However, it should be noted that Virginia’s percentage of local inmates being held pretrial in 2019 was at 47.4%, which was much lower than both the national average and most other states. See, Zeng, Z., & Minton, T.D. (2021, October). *Census of Jails, 2005–2019 – Statistical Tables*. Bureau of Justice Statistics, at p. 20: Table 8 - Confined inmates in local jails, by conviction status and state, midyear 2019. Retrieved from <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/cj0519st.pdf>.
- ¹⁰ Cassell, P. G., & Fowles, R. (2020). Does bail reform increase crime? An empirical assessment of the public safety implications of bail reform in Cook County, Illinois. *Wake Forest Law Review*, 55(5), 933-984; Sardar, M. B. (2019). Give me liberty or give me alternatives: Ending cash bail and its impact on pretrial incarceration. *Brooklyn Law Review*, 84(4), 1421-1458; Stevenson, M., & Mayson, S. G. (2017). Bail reform: New directions for pretrial detention and release. *Faculty Scholarship at Penn Law*. Retrieved from https://scholarship.law.upenn.edu/faculty_scholarship/1745.

¹¹ See, e.g., Dobbie, W., Goldin, J., & Yang, C. S. (2018). The effects of pretrial detention on conviction, future crime, and employment: Evidence from randomly assigned judges. *The American Economic Review*, 108(2), 201-240; Gupta, A., Hansman, C., & Frenchman, E. (2016). The heavy costs of high bail: Evidence from judge randomization. *Journal of Legal Studies*, 45, 471-505; Heaton, P., Mayson, S. G., & Stevenson, M. (2017). The downstream consequences of misdemeanor pretrial detention. *Stanford Law Review*, 69(3), 711-794; Myers, N. M. (2017). Eroding the presumption of innocence: Pre-trial detention and the use of conditional release on bail. *The British Journal of Criminology*, 57(3), 664-683; Leslie, E., & Pope, N. G. (2018). The unintended impact of pretrial detention on case outcomes: Evidence from New York City arraignments. *The Journal of Law & Economics*, 60(3), 529-557; Sacks, M., & Ackerman, A. R. (2014). Bail and sentencing: Does pretrial detention lead to harsher punishment? *Criminal Justice Policy Review*, 25, 59-77; Stevenson, M. T. (2018). Distortion of justice: How the inability to pay bail affects case outcomes. *Journal of Law, Economics, and Organization*, 34(4), 511-542; Sutton, J. R. (2013). Structural bias in the sentencing of felony defendants. *Social Science Research*, 42, 1207-1221.

¹² See, e.g., Baughman, S. B. (2017). Costs of pretrial detention. *Boston University Law Review*, 97(1), 1-30; Dobbie, W., Goldin, J., & Yang, C. S. (2018). The effects of pretrial detention on conviction, future crime, and employment: Evidence from randomly assigned judges. *The American Economic Review*, 108(2), 201-240; Gupta, A., Hansman, C., & Frenchman, E. (2016). The heavy costs of high bail: Evidence from judge randomization. *Journal of Legal Studies*, 45, 471-505; Holsinger, A. M. (2016). *Analyzing bond supervision data: The effects of pretrial detention on self-reported outcomes*. Crime and Justice Institute. Retrieved from http://www.crij.org/assets/2017/07/13_bond_supervision_report_R3.pdf; Holsinger, A.M., & Holsinger, K. (2018). Analyzing bond supervision data: The effects of pretrial detention on self-reported outcomes. *Federal Probation*, 82(2), 39-45; Leslie, E., & Pope, N. G. (2018). The unintended impact of pretrial detention on case outcomes: Evidence from New York City arraignments. *The Journal of Law & Economics*, 60(3), 529-557; Lowenkamp, C.T., & VanNostrand, M. (2013). *Exploring the impact of supervision on pretrial outcomes*. New York: Laura and John Arnold Foundation; Pager, D. (2003). The mark of a criminal record. *American Journal of Sociology*, 108, 937-975; Western, B. (2006). *Punishment and inequality*. New York, NY: Russell Sage Foundation.

¹³ See, e.g., Barno, M., Martinez, D. N., & Williams, K. R. (2020). Exploring alternatives to cash bail: An evaluation of Orange County's Pretrial Assessment and Release Supervision (PARS) program. *American Journal of Criminal Justice*, 45, 363-378; Baughman, S. B. (2017). Costs of pretrial detention. *Boston University Law Review*, 97(1), 1-30; Donnelly, E. A., & Macdonald, J. M. (2018). The downstream effects of bail and pretrial detention on racial disparities in incarceration. *The Journal of Criminal Law and Criminology*, 108(4), 775-814; Martinez, B. P., Petersen, N., & Omori, M. (2020). Time, money, and punishment: Institutional racial-ethnic inequalities in pretrial detention and case outcomes. *Crime & Delinquency*, 66(6-7), 837-863; Rabuy, B., & Kopf, D. (2016). *Detaining the poor: How money bail perpetuates an endless cycle of poverty and jail time*. Prison Policy Initiative. Retrieved from <https://www.prisonpolicy.org/reports/incomejails.html>; Zeng, Z. (2018). *Jail inmates in 2016*. Washington, DC: Bureau of Justice Statistics.

¹³ Martinez, B. P., Petersen, N., & Omori, M. (2020). Time, money, and punishment: Institutional racial-ethnic inequalities in pretrial detention and case outcomes. *Crime & Delinquency*, 66(6-7), 837-863; Menefee, M. R. (2018). The role of bail and pretrial detention in the reproduction of racial inequalities. *Sociology Compass*, 12(5), 1-9; Stevenson, M., & Mayson, S. G. (2017). Bail reform: New directions for pretrial detention and release.

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¹⁵ Yang, C. S. (2019). Toward an optimal bail system. *New York University Law Review*, 92, 1399-1493.

¹⁶ Gold, R. M., & Wright, R. F. (2020). The political patterns of bail reform. *Wake Forest Law Review*, 55(4), 743-756; Stevenson, M., & Mayson, S. G. (2017). Bail reform: New directions for pretrial detention and release. *Faculty Scholarship at Penn Law*. Retrieved from https://scholarship.law.upenn.edu/faculty_scholarship/1745; Yang, C. S. (2019). Toward an optimal bail system. *New York University Law Review*, 92, 1399-1493.

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- ²⁸ 98 Stat. 1976 (1984). See also Sardar, M. B. (2019). Give me liberty or give me alternatives: Ending cash bail and its impact on pretrial incarceration. *Brooklyn Law Review*, 84(4), 1421-1458; Van Brunt, A., & Bowman, L. E. (2018). Toward a just model of pretrial release: A history of bail reform and a prescription for what's next. *The Journal of Criminal Law and Criminology*, 108(4), 701-774.
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- ³⁵ Sardar, M. B. (2019). Give me liberty or give me alternatives: Ending cash bail and its impact on pretrial incarceration. *Brooklyn Law Review*, 84(4), 1421-1458; Shteynberg, R. V., & Worden, A. P. (2020). Bail and pretrial detention reform in the lower courts. In A. Smith & S. Maddan (Eds.), *The Lower Courts* (pp. 119-131). Routledge; Van Brunt, A., & Bowman, L. E. (2018). Toward a just model of pretrial release: A history of bail reform and a prescription for what's next. *The Journal of Criminal Law and Criminology*, 108(4), 701-774.

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- ³⁷ Gold, R. M., & Wright, R. F. (2020). The political patterns of bail reform. *Wake Forest Law Review*, 55(4), 743-756.
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- ³⁹ Doyle, C., Bains, C., & Hopkins, B. (2019). Bail reform: A guide for state and local policymakers. Criminal Justice Policy Program; Gouldin, L. P. (2020). Reforming pretrial decision-making. *Wake Forest Law Review*, 55(4), 857-906.
- ⁴⁰ Stemen, D., & Olson, D. (2020). *Dollars and sense in Cook County: Examining the impact of General Order 18.8A on felony bond court decisions, pretrial release, and crime*. Chicago: Loyola University Chicago. In 2017, General Order 18.8A was issued by the Chief Judge of the Circuit Court of Cook County. This General Order established a presumption of release without monetary bail. For those required to post a monetary bail, lower bail amounts were encouraged and the order specified that bail should be set at an amount that was affordable for the defendant.
- ⁴¹ Anderson, C., Redcross, C., Valentine, E., & Miratrix, L. (2019). *Evaluation of pretrial justice system reforms that use the Public Safety Assessment: Effects of New Jersey's criminal justice reform*. New York: MDRC; Grant, G. A. (2019). *Report to the Governor and the Legislature*. Retrieved from <https://www.njcourts.gov/courts/assets/criminal/cjrannualreport2019.pdf?c=XNp>. In 2017, New Jersey implemented its Criminal Justice Reform (CJR) initiative. Under this initiative, New Jersey shifted away from reliance on monetary bail to a risk-based system that utilizes the Public Safety Assessment (PSA) to assess a defendant's risk of failure to appear and new criminal activity, along with a decision-making framework to inform release conditions.
- ⁴² See, e.g., Garrett, B. L., & Thompson, S. G. (2021). Monitoring the misdemeanor bail reform consent decree in Harris County, Texas. *Judicature*, 105(2), 40-47; Garrett, B. L., Thompson, S. G., Carmichael, D., Naufal, G., Jeong, J., Seasock, A., Caspers, H., & Kang, S. (2021). *Monitoring pretrial reform in Harris County: Second report of the court-appointed monitor*. Retrieved from <https://static.texastribune.org/media/files/f66da81cc40c6bf4bbec22e822314f44/second-odonnell-report.pdf>; Harris County District Attorney's Office. (2021). Bail, crime & public safety. Retrieved from https://app.dao.hctx.net/sites/default/files/2021-09/HCDAO%20Bail%20Crime%20%20Public%20Safety%20Report%2009.02.21_0.pdf
- ⁴³ Color of Change & Progressive Maryland. (2018, June). *Prince George's County: A study of bail*. Retrieved from https://static.colorofchange.org/static/v3/pg_report.pdf.
- ⁴⁴ Pretrial Services Agency for the District of Columbia. (2020). *Congressional budget justification and performance budget request fiscal year 2021*. Retrieved from <https://www.csosa.gov/wp-content/uploads/bsk-pdf-manager/2020/02/PSA-FY2021-Congressional-Budget-Justification-02102020.pdf>. In 1992, the District of Columbia shifted away from the use of secured bond. The bail system that currently operates in the District is considered an "in or out" system. The bail statute contains a presumption in support of pretrial release for all non-capital defendants, promotes the use of least restrictive conditions for eligible defendants who are released, gives the opportunity for preventive detention for individuals who pose risk to the greater community, and decreases the use of monetary-based detention. The Pretrial Services Agency for the District of Columbia's 2019 performance indicators showed that 88% of all defendants on pretrial release attended all scheduled court appearances and an 87% of all defendants on pretrial release remained arrest-free.
- ⁴⁵ Bechtel, K., Holsinger, A. M., Lowenkamp, C. T., & Warren, M. J. (2017). A meta-analytic review of pretrial research: Risk assessment, bond type, and interventions. *American Journal of Criminal Justice*, 42(2), 443-467; Calaway, W. R., & Kinsely, J. M. (2018). Rethinking bail reform. *University of Richmond Law Review*, 52(4), 795-830; Doyle, C., Bains, C., & Hopkins, B. (2019). Bail reform: A guide for state and local policymakers. Criminal Justice Policy Program; Gupta, A., Hanson, C., & Frenchman, E. (2016). The heavy costs of high bail: Evidence from judge randomization. *Journal of Legal Studies*, 45, 471-505; Jones, M. R. (2013). Unsecured bonds: The as effective and most efficient pretrial release option. Pretrial Justice Institute. Retrieved from https://www.nmcourts.gov/wp-content/uploads/2020/11/Unsecured_Bonds_The_As_Effective_and_Most_Efficient_Pretial_Release_Option_Jones_2013.pdf; Lowder, E. M., & Foudray, C. M. A. (2021). Use of risk assessments in pretrial supervision and decision-making and associated outcomes. *Crime & Delinquency*, 67(11), 1765-1791; Monaghan, J., van Holm, E. J., & Surprenant, C. W. (2020). Get jailed, jump bail? The impacts of cash bail on failure to appear and re-arrest in Orleans Parish. *American Journal of Criminal Justice*, <https://doi.org/10.1007/S12103-020-09591-9>; Ouss, A., & Stevenson, M. (2022). Does cash bail deter misconduct? Retrieved from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3335138; Stevenson, M., & Mayson, S. G. (2017). Bail

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⁴⁹ Gouldin, L. P. (2020). Reforming pretrial decision-making. *Wake Forest Law Review*, 55(4), 857-906; Hagel, O. (2021). My cash is my bond: Recognizing rights to cash bail forfeiture exoneration in Washington. *Washington Law Review*, 96(1), 209-240.

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- ¹⁰¹ *Id.*
- ¹⁰² VA. CODE ANN. § 19.2-119 (2021).
- ¹⁰³ VA. CODE ANN. § 19.2-45 (2021).
- ¹⁰⁴ See VA. CODE ANN. § 19.2-72 (2021). See also VA. CODE ANN. § 19.2-81 (2021).
- ¹⁰⁵ See VA. CODE ANN. §§ 19.2-73 and 19.2-74 (2021).
- ¹⁰⁶ VA. CODE ANN. § 19.2-80 (2021). See also VA. CODE ANN. § 19.2-82(A) (2021).

¹⁰⁷ The *Project* defined a “new criminal offense punishable by incarceration” as meaning that the defendant was initially arrested and brought before a judicial officer for the criminal offense during October 2017, regardless of the date on which the criminal offense was alleged to have occurred. Data from the *Project* revealed that 99% (11,378 of 11,487) of defendants in the cohort appeared before a magistrate and 1% (109 of 11,487) of defendants in the cohort were arrested following a direct indictment.

¹⁰⁸ VA. CODE ANN. § 19.2-124(A) (2021).

¹⁰⁹ VA. CODE ANN. § 19.2-124(B) (2021).

¹¹⁰ See *Fisher v. Commonwealth*, 236 Va. 403, 374 S.E.2d 46 (Nov. 18, 1988). See also *Commonwealth v. Duse*, 295 Va. 1, 809 S.E.2d 513 (Feb. 12, 2018). See also *Billingsley v. Commonwealth*, 2022 Va. App. LEXIS 77 (Mar. 22, 2022).

¹¹¹ VA. CODE ANN. § 19.2-121(A) (2021).

¹¹² 2021 Va. Acts, Sp. Sess. I, ch. 337. The legislation repealing all presumptions against bail from the Virginia Code is available at <https://lis.virginia.gov/cgi-bin/legp604.exe?212+sum+SB1266>. A wide range of criminal offenses previously carried a rebuttable presumption against bail. Examples of such offenses include, but are not limited to, first and second degree murder, voluntary manslaughter, kidnapping, malicious felonious assault, robbery, felonious sexual assault, arson of an occupied structure, certain drug distribution crimes, firearms crimes that carried a mandatory minimum sentence, certain protective order violations, sex trafficking crimes, certain driving under the influence crimes, and strangulation.

¹¹³ VA. CODE ANN. § 19.2-120(B) (2021).

¹¹⁴ VA. CODE ANN. §§ 19.2-119 and 19.2-123(A)(3) (2021).

¹¹⁵ VA. CODE ANN. § 19.2-121(A) (2021).

¹¹⁶ VA. CODE ANN. § 19.2-120(A) (2021).

¹¹⁷ VA. CODE ANN. §§ 19.2-121(A) and 19.2-123(A)(4) (2021).

¹¹⁸ VA. CODE ANN. § 19.2-152.2 *et. seq.* (2021).

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¹²⁰ VA. CODE ANN. § 19.2-152.4:3(A) (2021).

¹²¹ VA. CODE ANN. § 19.2-152.4:3(B) (2021).

¹²² Data from the *Virginia Pre-Trial Data Project* showed that 92% (3,685 of 4,017) of the defendants in the cohort who were released on a secured bond for a new criminal offense punishable by incarceration during October 2017 utilized the services of a bail bondsman.

¹²³ VA. CODE ANN. § 9.1-185.5 (2021); 6 VA. ADMIN CODE §20-250-250 (2021).

¹²⁴ VA. CODE ANN. § 9.1-185 (2021). Note: As of November 2018, there were 375 actively licensed bail bondsmen in Virginia. This total included 238 surety bail bondsmen, 51 property bail bondsmen, 56 agents, and an additional 30 individuals who had a combination of these licenses per the Virginia Department of Criminal Justice Services, email communication, November 2, 2018.

¹²⁵ VA. CODE ANN. § 9.1-185 (2021).

¹²⁶ 6 VA. ADMIN CODE §20-250-250(M) (2021).

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¹²⁸ Virginia State Crime Commission. (2019). *2018 annual report: Virginia Pre-Trial Data Project and pre-trial process*. p. 57. Available at <http://vscc.virginia.gov/2019/VSCC%202018%20Annual%20Report%20-%20Pre-trial%20Data%20Project%20and%20Pre-trial%20Process.pdf>.

¹²⁹ Virginia State Crime Commission. (2021, September). *Virginia Pre-Trial Data Project*. Available at <http://vscc.virginia.gov/virginiapretrialdataproject.asp>.

¹³⁰ The Virginia Criminal Sentencing Commission will replicate the *Project* on an annual basis. Subsequent datasets will incorporate a full fiscal year of data rather than data from a singular month.

¹³¹ The data further revealed that of the 2,299 released defendants who were arrested for a new in-state offense punishable by incarceration, 88% (2,029 of 2,299) were arrested for a misdemeanor offense.

¹³² VA. CODE ANN. § 19.2-159 (2021); See Office of the Executive Secretary of the Supreme Court of Virginia. (January 21, 2022). *Eligibility for court-appointed counsel indigency guidelines*. Retrieved from https://www.vacourts.gov/courtadmin/aoc/djs/resources/indigency_guidelines.pdf.

¹³³ The indigency variable is a proxy measure calculated based upon whether the attorney type at case closure in the court case management systems was noted as a public defender or court-appointed attorney. This measure does not capture any changes to the attorney type that occurred before case closure.

¹³⁴ Virginia State Crime Commission. (2019, December). *Virginia Pre-Trial Data Project preliminary findings*. Available at <http://vscc.virginia.gov/images/VSCC%20Pre-Trial%20Data%20Project%20Preliminary%20Findings.pdf>.

¹³⁵ Staff sought to identify amendments to bail processes in other states over the past 5 years. Staff selected this time period in an effort to identify recent trends across the country.

¹³⁶ See Appendix A for a list of amendments by state over the past five years.

¹³⁷ See Appendix A for a list of amendments by state over the past five years.

¹³⁸ ME. REV. STAT. ANN. tit. 15, § 1026(3)(B-1) (2021). See ME. REV. STAT. ANN. tit. 17-A, § 1604(1)(E) (2021). The maximum term of imprisonment for a Class E crime is 6 months.

- ¹³⁹ ME. REV. STAT. ANN. tit. 15, §1026(4)(C)(4), (12), (13), and (14) (2021).
- ¹⁴⁰ VT. STAT. ANN. tit. 13 § 7551(b)(1)(B) (2021).
- ¹⁴¹ VT. STAT. ANN. tit. 13 § 7551(b)(2) (2021).
- ¹⁴² TEX. CRIM. PROC. CODE ANN. § 17.03(b-2) (2021). See also McCullough, J. (2021, September 13). Texas bill to require cash bail for those accused of violent crimes becomes law. *The Texas Tribune*. Retrieved from <https://www.texastribune.org/2021/09/03/texas-bail-legislation-abbott/>.
- ¹⁴³ 2021 Ala. Acts 267. See also Moseley, B. (2021, April 8). Alabama Senate passes Aniah's Law. *Alabama Political Reporter*. Retrieved from <https://www.alreporter.com/2021/04/08/senate-passes-aniahs-law/>
- ¹⁴⁴ See Alabama Const. Art. XVII, §284.01.
- ¹⁴⁵ See Appendix A for a list of amendments by state over the past five years.
- ¹⁴⁶ 2019 N.Y. Laws 59 (Part JJJ) § 2(4).
- ¹⁴⁷ Greene, L., & Parascandola, R. (2020, March 5). Many suspects freed under bail reform go on to commit major crimes: NYPD. *New York Daily News*. Retrieved from <https://www.nydailynews.com/new-york/ny-crime-bail-reform-20200305-orj4edxnh5awfojesnohu276mq-story.html>.
- ¹⁴⁸ 2020 N.Y. Laws 56 (Part UUU) § 2(4)(e), (g), and (o).
- ¹⁴⁹ UAA Justice Center. (2016). Senate Bill 91: Summary of Policy Reforms. *Alaska Justice Forum*, 33(1), 2.
- ¹⁵⁰ 2019 AK. Sess. Laws 4.
- ¹⁵¹ *Id.*
- ¹⁵² 725 ILL. COMP. STAT. 5/110-1.5 (2023); See also Ali, S. (2021, February 24). Illinois becomes first state to end cash bail as part of criminal justice reform law. *NBC News*. Retrieved from <https://www.nbcnews.com/news/us-news/illinois-becomes-first-state-end-money-bail-part-massive-criminal-n1258679>.
- ¹⁵³ The increases in homicide offenses and aggravated assault offenses were particularly noteworthy. See FBI. (2020). *Crime Data Explorer*, Rate of homicide offenses by U.S. population, 2010-2020 and Rate of aggravated assault offenses by U.S. population, 2010-2020; See also Chalfin, A., & MacDonald, J. (2021, July 9). We don't know why violent crime is up. But we know there's more than one cause. *The Washington Post*. Retrieved from https://www.washingtonpost.com/outlook/we-dont-know-why-violent-crime-is-up-but-we-know-theres-more-than-one-cause/2021/07/09/467dd25c-df9a-11eb-ae31-6b7c5c34f0d6_story.html.
- ¹⁵⁴ Anderson, C., Redcross, C., Valentine, E., & Miratrix, L. (2019). *Evaluation of pretrial justice system reforms that use the Public Safety Assessment: Effects of New Jersey's criminal justice reform*. New York: MDRC. Retrieved from https://www.mdrc.org/sites/default/files/PSA_New_Jersey_Report_%231.pdf.
- ¹⁵⁵ *Id.*
- ¹⁵⁶ Grant, G. A. (2019). *Report to the Governor and the Legislature*. Retrieved from <https://www.njcourts.gov/courts/assets/criminal/cjrannualreport2019.pdf?c=XNp>.
- ¹⁵⁷ *Id.*
- ¹⁵⁸ Letter from Brian Frosh, Attorney General, Maryland, to Alan M. Wilner, Chair, Standing Committee on Rules of Practice and Procedure (2016, October 25) Retrieved from https://www.marylandattorneygeneral.gov/News%20Documents/Rules_Committee_Letter_on_Pretrial_Release.pdf
- ¹⁵⁹ Md. Rule 4-216.1(b)(A) (2021). See also Standing Committee on Rules of Practice and Procedure. (2016, November 22). *Notice of proposed rule changes*. Retrieved from <https://mdcourts.gov/sites/default/files/rules/reports/192nd.pdf>.
- ¹⁶⁰ Color of Change & Progressive Maryland. (2018, June). *Prince George's County: A study of bail*. Retrieved from https://static.colorofchange.org/static/v3/pg_report.pdf.
- ¹⁶¹ Stemen, D., & Olson, D. (2020). *Dollars and sense in Cook County: Examining the impact of General Order 18.8A on felony bond court decisions, pretrial release, and crime*. Chicago: Loyola University Chicago.
- ¹⁶² Garrett, B. L., & Thompson, S. G. (2021). Monitoring the misdemeanor bail reform consent decree in Harris County, Texas. *Judicature*, 105(2), 40-47.
- ¹⁶³ Garrett, B. L., & Thompson, S. G. (2021). Monitoring the misdemeanor bail reform consent decree in Harris County, Texas. *Judicature*, 105(2), 40-47; Harris County Criminal Courts at Law. (2021). *Rules of Court*. Retrieved from <https://www.ccl.hctx.net/attorneys/rules/rules.pdf>.
- ¹⁶⁴ The ODonnell Consent Decree is the first federal court-supervised remedy concerning bail. The consent decree is the result of the 2016 class action lawsuit, *O'Donnell et al. v. Harris County et al.*, filed alleging that misdemeanor arrestees were subject to unconstitutional bail practices in Harris County, Texas. See also, Harris County Justice Administration. (2022). *O'Donnell Consent Decree*. Retrieved from <https://jad.harriscountytexas.gov/O'Donnell-Consent-Decree>; Garrett, B. L. & Thompson, S. G. (2021). Monitoring the misdemeanor bail reform consent decree in Harris County, Texas. *Judicature*, 105(2), 40-47.
- ¹⁶⁵ Garrett, B. L., & Thompson, S. G. (2021). Monitoring the misdemeanor bail reform consent decree in Harris County, Texas. *Judicature*, 105(2), 40-47.
- ¹⁶⁶ Garrett, B. L., & Thompson, S. G. (2021). Monitoring the misdemeanor bail reform consent decree in Harris County, Texas. *Judicature*, 105(2), 40-47; Garrett, B. L., Thompson, S. G., Carmichael, D., Naufal, G., Jeong, J., Seasock, A., Caspers, H., & Kang, S. (2021). *Monitoring pretrial reform in Harris County: Second report of the*

court-appointed monitor. Retrieved from

<https://static.texastribune.org/media/files/f66da81cc40c6bf4bbec22e822314f44/second-odonnell-report.pdf>.

¹⁶⁷ Garrett, B. L., & Thompson, S. G. (2021). Monitoring the misdemeanor bail reform consent decree in Harris County, Texas. *Judicature*, 105(2), 40-47; Garrett, B. L., Thompson, S. G., Carmichael, D., Naufal, G., Jeong, J., Seasock, A., Caspers, H., & Kang, S. (2021). *Monitoring pretrial reform in Harris County: Second report of the court-appointed monitor*. Retrieved from

<https://static.texastribune.org/media/files/f66da81cc40c6bf4bbec22e822314f44/second-odonnell-report.pdf>.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ Garrett, B. L., Thompson, S. G., Carmichael, D., Naufal, G., Jeong, J., Seasock, A., Caspers, H., & Kang, S. (2021). *Monitoring pretrial reform in Harris County: Second report of the court-appointed monitor*. Retrieved from <https://static.texastribune.org/media/files/f66da81cc40c6bf4bbec22e822314f44/second-odonnell-report.pdf>.

¹⁷² *Id.*

¹⁷³ Harris County District Attorney's Office. (2021). Bail, crime & public safety. Retrieved from

https://app.dao.hctx.net/sites/default/files/2021-09/HCDAO%20Bail%20Crime%20Public%20Safety%20Report%2009.02.21_0.pdf

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ See Appendix B for a list of states which restrict the use of secured bond for specific offenses.

¹⁷⁸ 725 ILL. COMP. STAT. 5/110-1.5 (2023); See also Ali, S. (2021, February 24). Illinois becomes first state to end cash bail as part of criminal justice reform law. *NBC News*. Retrieved from <https://www.nbcnews.com/news/us-news/illinois-becomes-first-state-end-money-bail-part-massive-criminal-n1258679>.

¹⁷⁹ See 2019 N.Y. Laws 59 (Part JJJ) § 2(4). See also 2020 N.Y. Laws 56 (Part UUU) § 2(4).

¹⁸⁰ CONN. GEN. STAT. §54-64a(2) (2021).

¹⁸¹ See Appendix C for a list of states with a presumption of release without financial conditions.

¹⁸² FLA. STAT. §907.041(3) (2021).

¹⁸³ MINN. R. CRIM. P. 6.02 (2016).

¹⁸⁴ W. VA. CODE § 62-1C-1a(a)(1) (2021).

¹⁸⁵ See Appendix D for a list of states that require the use of least restrictive conditions of bond. Note that when identifying these states, staff focused on states that specifically use the phrase least restrictive conditions, or a similar phrase such as least onerous conditions or least restrictive means, in their statutes or court rules.

¹⁸⁶ TEX. CODE CRIM. PROC. CODE. ANN. art. 17.028(b) (2021).

¹⁸⁷ GA. CODE ANN. § 17-6-1(b)(1) (2021).

¹⁸⁸ ALA. R. CRIM. P. RULE 7.2. (2022).

¹⁸⁹ 2021 Va. Acts, Sp. Sess. I, ch. 337. The legislation repealing all presumptions against bail from the Virginia Code is available at <https://lis.virginia.gov/cgi-bin/legp604.exe?212+sum+SB1266>. A wide range of criminal offenses previously carried a rebuttable presumption against bail. Examples of such offenses include, but are not limited to, first and second degree murder, voluntary manslaughter, kidnapping, malicious felonious assault, robbery, felonious sexual assault, arson of an occupied structure, certain drug distribution crimes, firearms crimes that carried a mandatory minimum sentence, certain protective order violations, sex trafficking crimes, certain driving under the influence crimes, and strangulation.

¹⁹⁰ *Id.* See also former VA. CODE ANN. §§ 19.2-120(B), (C), (D), and (E) and 19.2-120.1 (2020).

¹⁹¹ VA. CODE ANN. § 19.2-120(A) (2021).

¹⁹² Virginia State Crime Commission. (2019, December). *Virginia Pre-Trial Data Project preliminary findings*.

Available at <http://vscc.virginia.gov/images/VSCC%20Pre-Trial%20Data%20Project%20Preliminary%20Findings.pdf>.

¹⁹³ VA. CODE ANN. § 19.2-123(A) (2021).

¹⁹⁴ *Id.*

¹⁹⁵ The median bond amount at release for these 1,127 defendants was \$2,500.

¹⁹⁶ Doyle, C., Bains, C., & Hopkins, B. (2019). *Bail reform: A guide for state and local policymakers*. Criminal Justice Policy Program; Hopkins, B., Bains, C., & Doyle, C. (2018). Principles of pretrial release reforming bail without repeating its harms. *Journal of Criminal Law & Criminology*, 108(4), 679-700; Sardar, M. B. (2019). Give me liberty or give me alternatives: Ending cash bail and its impact on pretrial incarceration. *Brooklyn Law Review*, 84(4), 1421-1458.

¹⁹⁷ Stevenson, M., & Mayson, S. G. (2017). Bail reform: New directions for pretrial detention and release. *Faculty Scholarship at Penn Law*. Retrieved from https://scholarship.law.upenn.edu/faculty_scholarship/1745; Doyle, C., Bains, C., & Hopkins, B. (2019). *Bail reform: A guide for state and local policymakers*. Criminal Justice Policy Program.

¹⁹⁸ VA. CODE ANN. §19.2-120(A) (2021).

¹⁹⁹ See Appendix C for a list of states with a presumption of release without financial conditions.

- ²⁰⁰ VanNostrand, M., Rose, K., & Weibrecht, K. (2011). *State of the science of pretrial release recommendations and supervision*. Pretrial Justice Institute. Retrieved from https://www.ncsc.org/_data/assets/pdf_file/0015/1653/state-of-the-science-pretrial-recommendations-and-supervision-pji-2011.ashx.pdf.
- ²⁰¹ Pretrial Justice Institute. (2015). *Glossary of terms and phrases relating to bail and the pretrial release or detention decision*. Pretrial Justice Institute. Retrieved from <https://www.courts.wa.gov/subsite/mjc/docs/GlossaryofTerms.pdf>.
- ²⁰² *Id.* at p.15.
- ²⁰³ *Id.*
- ²⁰⁴ National Center on State Courts. (2019). *Bail reform: A practical guide based on research and experience*. Retrieved from https://www.ncsc.org/_data/assets/pdf_file/0023/16808/bail-reform-guide-3-12-19.pdf.
- ²⁰⁵ *Id.*
- ²⁰⁶ VA. CODE ANN. §§ 19.2-121(A) and 19.2-123(A)(4) (2021).
- ²⁰⁷ See VA. CODE ANN. §19.2-123 (2021).
- ²⁰⁸ VA. CODE ANN. § 19.2-74(A) (2021).
- ²⁰⁹ VA. CODE ANN. §§ 19.2-80 and 19.2-390(A)(1) (2021).
- ²¹⁰ For additional information on this practice, see, e.g., International Association of Chiefs of Police. (2016). *Citation in lieu of arrest: Examining law enforcement's use of citation across the United States*. Retrieved from <https://www.theiacp.org/sites/default/files/all/c/Citation%20in%20lieu%20of%20Arrest%20Literature%20Review.pdf>; National Conference of State Legislatures. (2019, March 18). Citation in lieu of arrest. Retrieved from <https://www.ncsl.org/research/civil-and-criminal-justice/citation-in-lieu-of-arrest.aspx>.
- ²¹¹ See Virginia State Crime Commission. (2019). *2018 Annual report: Fingerprinting of defendants*. Available at <http://vscc.virginia.gov/2019/VSCC%202018%20Annual%20Report%20-%20Fingerprinting%20of%20Defendants.pdf>.
- ²¹² See Virginia Department of State Police. Col. Gary T. Settle (2019). *E-Summons Pilot Project activities and outcomes of system implementation*. Retrieved from <https://rga.lis.virginia.gov/Published/2019/RD498/PDF>
- ²¹³ *Id.*
- ²¹⁴ VA. CODE ANN. § 17.1-275.14 (2021). See also Va. Code Ann. § 17.1-279.1 (2021).
- ²¹⁵ VA. CODE ANN. § 19.2-152.4:3(A)(1) and (A)(2) (2021).
- ²¹⁶ Virginia Department of Criminal Justice Services. (2018, April 2). *Virginia Pretrial Risk Assessment Instrument. Instruction Manual – Version 4.3*. Retrieved from https://www.dcjs.virginia.gov/sites/dcjs.virginia.gov/files/publications/corrections/virginia-pretrial-risk-assessment-instrument-vprai_0.pdf.
- ²¹⁷ *Id.*
- ²¹⁸ *Id.*
- ²¹⁹ Virginia State Crime Commission. (2019). *2018 annual report: Virginia Pre-Trial Data Project and pre-trial process*, at pp. 49-50: “The Virginia Code requires pretrial services agency officers to investigate and interview defendants who are detained in jails and to complete a pretrial investigation report for the court. In FY18, over 27,500 of the nearly 39,000 defendants who received a pretrial investigation were ultimately not ordered to report to pretrial services agency supervision as a condition of bond. The fact that a defendant was interviewed and not placed on pretrial services agency supervision was not a concern noted by staff because the court had received information to use when making a bond determination. However, over 26,000 defendants who were eligible for a pretrial investigation did not receive one. Throughout the course of the study, staff were presented with numerous reasons as to why pretrial investigations may not have been completed, such as mental health issues, medical emergencies, intoxication, limited resources of pretrial services agencies, time constraints at jails, malfunctioning video interview equipment, and defendants who refuse to be interviewed. While there are many reasons why a pretrial investigation may not be completed, data is not readily available or consistently maintained in order to determine why such a high number of eligible defendants are not receiving the required pretrial investigation. Additionally, it should be noted that significantly more defendants were placed on pretrial services agency supervision without a pretrial investigation (direct placement) than with such an investigation. Of the 28,735 placements to pretrial services supervision made in FY18, 61% (17,568) of defendants were directly placed without a pretrial investigation, while only 39% (11,167) of defendants were placed following such an investigation.²¹⁹ Staff found these numbers to be significant for two reasons. First, pretrial services agencies invest significant resources in conducting pretrial investigations. Second, pretrial services agency directors and officers frequently commented on the lack of resources available to such agencies. The resources required to conduct such pretrial investigations coupled with the lack of resources that pretrial services agencies are facing is an issue that must further be examined as agencies consider how to allocate resources between their investigative and supervision responsibilities.” Available at <http://vscc.virginia.gov/2019/VSCC%202018%20Annual%20Report%20-%20Pre-trial%20Data%20Project%20and%20Pre-trial%20Process.pdf>.
- ²²⁰ See, e.g., Advancing Pretrial Policy & Research (APPR). *About the Public Safety Assessment*. Retrieved from <https://www-cdn.law.stanford.edu/wp-content/uploads/2019/05/PSA-Sheet-CC-Final-5.10-CC-Upload.pdf>; For

additional information relating to the PSA, see, e.g., Stanford Pretrial Risk Assessment Tools Factsheet Project. *Risk assessment factsheet: Public Safety Assessment (PSA)*. Retrieved from <https://wwwcdn.law.stanford.edu/wp-content/uploads/2019/05/PSA-Sheet-CC-Final-5.10-CC-Upload.pdf>. Note that the terms Public Safety Assessment, PSA, and the PSA logo (collectively, the “PSA Marks”) are trademarks of the Laura and John Arnold Foundation (LJAF).

²²¹ Advancing Pretrial Policy & Research (n.d.). *Public Safety Assessment Sites*. Retrieved from <https://advancingpretrial.org/psa/psa-map/>.

²²² VA. CODE ANN. § 19.2-152.3 (2021).

²²³ See Associated Press. (2019, May 4). Virginia court system uses text messages to remind you to show up. *WDBJ7*. Retrieved from <https://www.wdbj7.com/content/news/Virginia-will-now--509485351.html>. See also Solomon, B. (2019, May 8). Some Virginia public defenders sending ‘see you in court’ reminders to clients. *WHSV3*. Retrieved from <https://www.whsv.com/content/news/Some-Virginia-public-defenders-sending-see-you-in-court-reminders-to-clients-509647351.html>.

²²⁴ Betchel, K., Holsinger, A. M., Lowenkamp, C. T., & Warren, M. J. (2017). A meta-analytic review of pretrial research: Risk assessment, bond type, and intervention. *American Journal of Criminal Justice*, 42, 443-467; Hatton, R., & Smith, J. (2021). *Research on the effectiveness of pretrial support and supervision services: A guide for pretrial services programs*. UNC School of Government Criminal Justice Innovation Lab.

²²⁵ Ferri, R. (2022). The benefits of live court date reminder phone calls during pretrial case processing. *Journal of Experimental Criminology*, 18, 149-169; Hatton, R., & Smith, J. (2021). *Research on the effectiveness of pretrial support and supervision services: A guide for pretrial services programs*. UNC School of Government Criminal Justice Innovation Lab; Howat, H., Forsyth, C. J., Biggar, R., & Howat, S. (2016). Improving court-appearance rates through court-date reminder phone calls. *Criminal Justice Studies*, 29(1), 77–87; Lowder, E. M., & Foudray, C. M. A. (2021). Use of risk assessments in pretrial supervision and decision-making and associated outcomes. *Crime & Delinquency*, 67(11), 1765-1791; Lowenkamp, C. T., Holsinger, A. M., & Dierks, T. (2018). Assessing the effects of court date notifications within pretrial case processing. *American Journal of Criminal Justice*, 43(2), 167–180; Rosenbaum, D. I., Hutsell, N., Tomkins, A. J., Bornstein, B. H., Herian, M. N., & Neeley, E. M. (2012). Court date reminder postcards: A benefit-cost analysis using reminder cards to reduce failure to appear rates. *Judicature*, 95(4), 177–187.

²²⁶ Ferri, R. (2022). The benefits of live court date reminder phone calls during pretrial case processing. *Journal of Experimental Criminology*, 18, 149-169; Hatton, R., & Smith, J. (2021). *Research on the effectiveness of pretrial support and supervision services: A guide for pretrial services programs*. UNC School of Government Criminal Justice Innovation Lab.

²²⁷ Virginia Department of Criminal Justice Services. (2022, March). *Report on pretrial services agencies FY2021*. Retrieved from <https://www.dcjs.virginia.gov/sites/dcjs.virginia.gov/files/publications/corrections/report-pretrial-services-fy-2021.pdf>.

²²⁸ *Id.* The funding increased the number of localities served by pretrial services agencies from 100 to 115 between 2020 and March 2022. See also Virginia Department of Criminal Justice Services. (2020, December). *Report on pretrial services agencies FY2020*. Retrieved from <https://www.dcjs.virginia.gov/sites/dcjs.virginia.gov/files/publications/corrections/report-pretrial-services-fy2020.pdf>.

²²⁹ 725 ILL. COMP. STAT. 5/110-1.5 (2023).

²³⁰ See Illinois Courts. Pretrial Implementation Task Force. Retrieved from <https://www.illinoiscourts.gov/courts/additional-resources/pretrial-implementation-task-force/>.

²³¹ *Id.*

²³² Illinois Bar Association. (2022). The state of Illinois courts: What is happening in and around Illinois courtrooms (despite the pandemic). *Bench & Bar*, 52(6), 1-15. Retrieved from <https://www.isba.org/sites/default/files/sections/benchandbar/newsletter/Bench%20and%20Bar%20May%202022.pdf>. Phase 1 (to be completed by January 1, 2023) involves establishing legal and evidence-based pretrial services in counties without such services. Phase 2 (between January 1, 2023, and December 31, 2023) will include transitioning circuit courts in counties with reimbursed positions into a statewide model. Phase 3 (January 1, 2024, to December 31, 2024) will culminate with transitioning the remaining counties into the statewide model.

²³³ Virginia State Crime Commission. (2022). *2021 annual report: Diversion*.

APPENDIX A: States That Amended Their Bail Processes (24) (1/2016 – 11/2021)

More Restrictive: the state enacted amendments to its bail process that either increased the use of secured bond in certain instances or adopted other measures that were not specifically meant to promote pretrial release.

Less Restrictive: the state enacted amendments to its bail process or other measures that were either meant to limit the use of secured bond or promote pretrial release.

STATE	YEAR	ACT	TYPE OF AMENDMENT
Alabama	2021 (pending vote) ¹	2021 Ala. Acts 267	<p>More Restrictive</p> <p>Alabama passed Aniah’s Law, a proposed constitutional amendment that would allow judges and prosecutors broader discretion in requesting and denying bail to those accused of committing violent crimes.</p> <p>The legislation is named for Aniah Blanchard, a 19-year old Alabama college student who was kidnapped and murdered in October 2019. The defendant was out on bond at the time of the offense.</p>
Alaska	2016 (enacted), 2019 (rolled back)	2016 AK. Sess. Laws 36 2019 AK. Sess. Laws 4	<p>Less Restrictive, then Rolled Back</p> <p>In 2016, Alaska Governor Bill Walker signed into law reforms relating to pretrial, sentencing, and corrections.</p> <p>In 2019, Alaska Governor Michael Dunleavy signed into law a criminal justice package that repealed and replaced previous reforms.</p>
Arizona	2018	Ariz. R. Crim. P. 7.3 (2022)	<p>Less Restrictive</p> <p>Arizona Chief Justice Scott Bales issued Administrative Order No. 2016-16 establishing the Task Force on Fair Justice for All: Court Ordered Fines, Penalties, Fees and Pretrial Release Policies. The Task Force ultimately made 65 recommendations.²</p> <p>In 2018, the Arizona Supreme Court approved a number of changes to the state’s Rules of Criminal Procedure regarding some of the recommendations.³</p>
California	2021	In re Humphrey, 482 P.3d 1008, (2021)	<p>Less Restrictive</p> <p>A defendant may not be held in custody pending trial unless the court has made an individualized determination that the arrestee has the financial ability to pay, but nonetheless failed to pay, the amount of bail the court finds reasonably necessary.</p>

STATE	YEAR	ACT	TYPE OF AMENDMENT
Colorado	2019	2019 Colo. Ch. 132	<p>Less Restrictive</p> <p>The Act prohibits a court from imposing a monetary condition of release for a defendant charged with a traffic offense, petty offense, or comparable municipal offense, except for a traffic offense involving death or bodily injury, eluding a police officer, circumventing an interlock device, or a municipal offense with substantially similar elements to a state misdemeanor offense.</p>
Connecticut	2017	2017 Conn. Acts 145 (Reg. Sess.)	<p>Less Restrictive</p> <p>The Act created a bond review time schedule for individuals held pretrial for misdemeanor and felony offenses.</p> <p>The Act also eliminated secured bond for specific misdemeanor offenses with judicial exceptions.</p>
Delaware	2018 (enacted), 2021 (rolled back)	81 Del. Laws 200 (2018) 83 Del. Laws 72 (2021)	<p>Less Restrictive, then Rolled Back</p> <p>In 2018, judges were encouraged to use other pretrial release conditions than secured bond. Also instructed judges to use an evidence based risk assessment tool in bail determinations.</p> <p>In 2021, created a secured bond presumption for certain serious offenses.</p>
Illinois	2020	2019 Ill. Laws 652	<p>Less Restrictive</p> <p>Eliminates the use of secured bond. Effective January 1, 2023.</p>
Georgia	2018 (enacted), 2021 (rolled back)	2018 Ga. Laws 416 2020 Ga. Laws 547	<p>Less Restrictive, then Rolled Back</p> <p>In 2016, required the court to consider financial circumstances of an accused individual when determining bail.</p> <p>In 2021, required the court to use unsecured or secured bond when determining bail for specific offenses.</p>
Indiana	2020	Ind. R. Crim. P. 26 (2016) Codified in 2017: 2017 Ind. Acts 187 (2017)	<p>Less Restrictive</p> <p>In 2016, the Indiana Supreme Court adopted Criminal Rule 26. Under the rule, the court encourages courts to utilize the results of an evidence-based risk assessment and release arrestees who do not present a flight or public safety risk without secured bond. The rule became effective statewide on January 1, 2020.</p>

STATE	YEAR	ACT	TYPE OF AMENDMENT
Maine	2021	2021 Me. Laws 397	Less Restrictive Eliminated secured bond for non-violent Class E misdemeanors, the least serious criminal violations.
Maryland	2017	Md. Rule 4-216.1	Less Restrictive Adopted a rule to promote the release of defendants on their own recognizance or unsecured bond.
Massachusetts	2018	2018 Mass. Acts 69	Less Restrictive Requires judges to issue a reason for secured bond decisions. Also, created a commission to evaluate the bail system.
Missouri	2019	Order dated December 18, 2018, re: Rules 21, 22 and 33.	Less Restrictive Court must start with non-monetary conditions of release and may impose monetary conditions only in an amount not exceeding what is necessary to ensure safety or defendant's appearance.
Nebraska	2020	2020 Neb. Laws 881	Less Restrictive Eliminated secured bond for lowest level misdemeanors and city ordinances with judicial exceptions.
New Hampshire	2019	2019 N.H. Laws 143	Less Restrictive Amended procedure for considering dangerousness of defendant during bail determination. Also, re-established commission on pretrial detention.
New Jersey	2017	2014 N.J. Laws 31	Less Restrictive Primarily rely on pretrial release by non-monetary means. Secured bond used only if it is determined that no other conditions of release will suffice.
New Mexico	2016	Sen. J. Res. 1, 2016 Leg., Reg. Sess. (N.M. 2016)	Less Restrictive A defendant who is neither a danger nor a flight risk shall not be detained solely because of financial inability to afford a secured bond.
New York	2019 (enacted), 2020 (rolled back)	2019 N.Y. Laws 59 2020 N.Y. Laws 56	Less Restrictive, then Rolled Back In 2019, presumption of release on own recognizance for select misdemeanors and nonviolent felonies. In 2020, additional offenses added to list of secured bond offenses.

STATE	YEAR	ACT	TYPE OF AMENDMENT
Texas	2021	Acts 2021, 87th Leg., 2nd C.S., ch. 11 (S.B. 6)	More Restrictive Prohibits the release on personal recognizance bond a defendant charged with a violent offense or charged while released on bail.
Utah	2020 (enacted), 2021 (rolled back)	2020 Utah Laws 185 2021 Utah Laws 431	Less Restrictive, then Rolled Back In 2020, created a presumption of release for individuals arrested for certain criminal offenses. In 2021, removed the presumption of release for a person arrested for certain criminal offenses.
Vermont	2018	2017 Vt. Acts & Resolves 164	Less Restrictive Created a cap for secured bond amounts for low level nonviolent offenses of \$200.
Virginia	2020, 2021	2020 Va. Acts 999 2021 Va. Acts 337	Less Restrictive In 2020, allowed judicial officers to make bail determinations without consulting an attorney for the Commonwealth for offenses which give rise to a rebuttable presumption against bail. In 2021, removed rebuttable presumption against bond for specific offenses.
West Virginia	2020	2020 W. Va. Acts 98	Less Restrictive For specific misdemeanor offenses, judicial officer will release individual on own recognizance.

Appendix by Crime Commission staff based on legal analysis.

¹ Alabama's reform is a constitutional amendment that requires approval through a statewide referendum. The vote will take place November 2022. See Alabama Const. Art. XVII, §284.01.

² Supreme Court of the State of Arizona. (2016, August 12). Justice for all: Report and recommendations of the task force on fair justice for all: Court-ordered fines, penalties, fees, and pretrial release policies. Retrieved from [https://www.azcourts.gov/Portals/74/TFFAIR/Reports/FINAL%20FairJustice%20Aug%2012-final%20formatted%20versionRED%20\(002\).pdf?ver=9pLeF4I9Bwm-V5BSVeB1vQ%3d%3d](https://www.azcourts.gov/Portals/74/TFFAIR/Reports/FINAL%20FairJustice%20Aug%2012-final%20formatted%20versionRED%20(002).pdf?ver=9pLeF4I9Bwm-V5BSVeB1vQ%3d%3d).

³ Fradella, H., & Scott-Hayward, C. (2019). Advancing bail and pretrial justice reform in Arizona. *Arizona State Law Journal*, 52, 845-881. Retrieved from https://arizonastatelawjournal.org/2021/01/13/advancing-bail-and-pretrial-justice-reform-in-arizona/#_ftn156.

APPENDIX B: States Which Restrict the Use of Secured Bond for Specific Offenses (7)

STATE	STATUTE
Colorado	COLO. REV. STAT. §16-4-113 (2021)
Connecticut	CONN. GEN. STAT. § 54-64a (2021)
Illinois	725 ILL. COMP. STAT. 5/100-1.5 (2021)
Maine	ME. REV. STAT. ANN. tit. 15, § 1026 (2021)
New York	N.Y. CRIM. PROC. LAW § 510.10 (2021)
Vermont	VT. STAT. ANN. tit. 15, § 7551 (2021)
West Virginia	W. VA. CODE § 62-1C-1A (2021)

Appendix by Crime Commission staff based on legal analysis.

APPENDIX C: States With a Presumption of Release Without Financial Conditions (26)

STATE	STATUTE
Alaska	ALASKA STAT. § 12.30.011 (2021)
Arizona	ARIZ. REV. STAT. ANN. § 13-3967 (2021)
Arkansas	ARK. R. CRIM. P. RULE 9.2 (2022)
California	CAL PENAL CODE § 1270 (2021)
Colorado	COLO. REV. STAT. § 16-4-113 (2021)
Delaware	DEL. CODE ANN. tit. 11 § 2105 (2021)
Florida	FLA. STAT. § 907.041 (2021)
Illinois	725 ILL. COMP. STAT. 5/110-2 (2021)
Iowa	IOWA CODE § 811.2 (2021)
Kentucky	KY. REV. STAT. ANN. § 431.520 (2021)
Maine	ME. REV. STAT. ANN tit. 15 § 1026 (2021)
Maryland	MD. CODE ANN., CRIM. PROC. § 5-101 (2021)
Minnesota	MINN. R. CRIM. P. 6.02 (2016)
Missouri	MO. REV. STAT. § 544.455 (2021)
Nebraska	NEB. REV. STAT. § 29-901 (2021)
New Jersey	N.J. STAT. ANN. §§ 2A:162-16, 2A:162-17 (2021)
New Mexico	N.M.D. CT. CRIM. P. RULES 5-401 (2020)
New York	N.Y. CRIM. PROC. LAW § 510.10 (2021)
North Dakota	N.D. R. CRIM. P. RULE 46 (2020)
Oregon	OR. REV. STAT. § 135.245 (2021)
South Carolina	S.C. CODE ANN. § 17-15-10 (2021)
South Dakota	S.D. CODIFIED LAWS § 23A-43-2 (2021)
Vermont	VT. STAT. ANN. tit.13, § 7554 (2021)
Washington	WASH. SUPER. CT. CRIM. R. 3.2
West Virginia	W. VA. CODE § 62-1C-1a (2021)
Wyoming	WYO. R. CRIM. P. RULE 46.1(2019)

Appendix by Crime Commission staff based on legal analysis.

APPENDIX D: States Which Require the Least Restrictive Conditions of Bond (21)

STATE	STATUTE
Alabama	ALA. R. CRIM. P. RULE 7.2 (2022)
Alaska	ALASKA STAT. § 12.30.011 (2021)
Arizona	Ariz. R. Crim. P. 7.3 (2018)
Colorado	COLO. REV. STAT. § 16-4-103 (2021)
Connecticut	CONN. GEN. STAT. § 54-64a (2021)
Georgia	GA. CODE ANN. § 17-6-1 (2021)
Hawaii	HAW. REV. STAT. § 804-4 (2021)
Maine	ME. REV. STAT. ANN. tit.15, § 1026 (2021)
Maryland	MD. RULE 4-216.1 (2021)
Nebraska	NEB. REV. STAT. § 29-901 (2021)
Nevada	NEV. REV. STAT. ANN. §178.4851 (2021)
New Jersey	N.J. STAT. ANN. §§ 2A:162-16, 2A: 162-17 (2021)
New Mexico	N.M.D. CT. CRIM. P. RULES 5-401 (2020)
New York	N.Y. CRIM. PROC. LAW § 510.10 (2021)
Oregon	OR. REV. STAT. § 135.245 (2021)
Tennessee	TENN. CODE ANN. § 40-11-116 (2021)
Texas	TEX. CODE. CRIM. PROC. ANN. art. 17.028 (2021)
Vermont	VT. STAT. ANN. tit. 13, § 7554 (2021)
Washington	WASH. SUPER. CT. CRIM. R. 3.2
West Virginia	W. VA. CODE § 62-1C-1a (2021)
Wyoming	WYO. R. CRIM. P. 46.1

Appendix by Crime Commission staff based on legal analysis.

