



SECURED BOND

Study Highlights

January 2022

An analysis of the 11,487 defendants in the *Virginia Pre-Trial Project* dataset who were charged with a new offense punishable by incarceration where a bail determination was made by a judicial officer revealed:

- 83% (9,503 of 11,487) were released during the pretrial period; and,
- 17% (1,984 of 11,487) were detained the entire pretrial period.

Of the 9,503 defendants released during the pretrial period:

- 56% (5,364) were released on PR or unsecured bond; and,
- 44% (4,139) were released on secured bond.

Most defendants were released from custody within 3 days of arrest.

The median secured bond amount was \$2,500 across felony contact events and \$2,000 across misdemeanor contact events.

What is secured bond?

When a person is charged with a crime and not released on a summons, that person will either be detained the entire pretrial period or released prior to trial under one of the following bail conditions: personal recognizance (PR) bond, unsecured bond, or secured bond. Neither PR nor unsecured bond require any financial conditions to be met before a person is released. Conversely, a secured bond requires a financial condition to be met before a person can be released. A secured bond can be posted by (i) paying the total amount of the bond in cash, (ii) allowing the court to obtain a lien against personal property, or (iii) utilizing a surety on the bond, who is most commonly a bail bondsman.

Key Study Findings

Staff conducted a comprehensive study of secured bond by reviewing relevant literature, examining Virginia bail statutes, analyzing statewide Virginia data, identifying bail reform measures in other states, and surveying numerous practitioners across Virginia. As a result of these efforts, staff developed the following ten key study findings relating to secured bond:

1. Virginia is in a unique position to examine its pretrial system as a result of the *Virginia Pre-Trial Data Project* (“*Project*”). While the October 2017 statewide dataset from this *Project* can be used to inform policy decisions, it cannot explain the “why” behind the data. Additionally, it is important to note that the data is limited in scope, as it was collected for a one-month time period that precedes the COVID-19 pandemic and recent criminal justice reform measures in Virginia.
2. While several other states have enacted bail reform measures, various factors present challenges to ascertaining the specific impacts of these reforms. The primary challenge is that no state has completely eliminated the use of secured bond. Furthermore, several states implemented bail reform measures and then repealed or modified those reforms. Additional challenges include the recentness of reform measures, a lack of complete or reliable data, the COVID-19 pandemic, and an overall rise in crime rates nationwide.
3. The statewide analysis of the *Project* dataset showed that (i) most defendants were ultimately released prior to trial, (ii) the majority of those defendants were released on a PR or unsecured bond, (iii) the large majority of defendants who were released prior to trial appeared in court, and (iv) the majority of defendants who were released prior to trial were not arrested for a new in-state criminal offense during the pretrial period. Furthermore, when examining the defendants who were released prior to trial and arrested for a new in-state offense during the pretrial period, data showed that the vast majority of those defendants were arrested for an in-state misdemeanor.

Of the 4,139 defendants who were released on a secured bond, 25% (1,019) also received pretrial services agency supervision.

Data on court appearance and public safety outcomes for the 9,503 defendants released during the pretrial period showed:

- 86% (8,149) were not charged with failure to appear during the pretrial period; and,
- 76% (7,204) were not arrested for a new in-state offense punishable by incarceration during the pretrial period.

Further examination of the 11,487 defendants who were charged with a new offense punishable by incarceration where a bail determination was made by a judicial officer found that:

- 59% were convicted of at least one charge in their contact event; and,
- Defendants who remained detained the entire pretrial period had higher conviction rates (77%) as compared to defendants who were released during the pretrial period (56%).

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4. A bail determination is not based solely on the nature of the current criminal charge. Bail determinations are made on a case-by-case basis using various statutory criteria, such as the person's prior criminal record, their ties to the community, and their ability to pay bond. These criteria are intended to aid magistrates and judges when determining whether a person poses a flight risk or a risk to public safety, even when the person is charged with a seemingly minor crime.
5. Magistrates and judges have broad discretion when setting bail conditions. These conditions are meant to ensure that a person appears in court and maintains good behavior pending trial. Such imposed conditions can include, but are not limited to, pretrial services agency supervision, electronic monitoring, drug testing, curfews, and no contact orders.
6. The Virginia Code favors setting bail, but does not guarantee pretrial release. Magistrates and judges must set bail unless there is probable cause to believe that a person is a flight risk or a risk to public safety.
7. The statewide analysis of the *Project* dataset found that many of the defendants released during the pretrial period were indigent. At least half of defendants released on a PR or unsecured bond were indigent, while at least 62% of defendants released on a secured bond were indigent.
8. The statewide analysis of the *Project* dataset also found that many of the defendants detained the entire pretrial period were indigent. At least 78% of the defendants who were detained the entire pretrial period were indigent. This data does not explain why these defendants remained detained. Defendants may remain detained for a variety of reasons, such as being held without bail, not being able to afford the secured bond, not having family or friends who are able or willing to post bond, or choosing to remain detained.
9. Bail bondsmen and pretrial services agencies are unique, but can be complimentary. The 2019 statewide analysis of the *Project* dataset by staff found that public safety outcomes were identical across defendants released on PR or unsecured bond with pretrial services agency supervision, secured bond only, and secured bond with pretrial services agency supervision. However, this analysis also revealed that court appearance rates were higher for the group of defendants who were released on secured bond with pretrial services agency supervision.
10. The potential impacts of bail reform in Virginia are unknown. While changes can be made to the use of secured bond in Virginia, it is unknown how such changes will impact detention rates, court appearance rates, public safety rates, the use of other bail conditions, and the need for various resources.

Broader measures to address pretrial detention rates

While this study focused primarily on the use of secured bond, other policy options exist to address pretrial detention rates in Virginia. These measures will require broader changes across the pretrial system, such as:

- Utilizing technology in the field so law enforcement officers can fingerprint individuals and release them on a summons for more classes of offenses;
- Implementing a non-interview based risk assessment instrument for use by magistrates and judges when making bail determinations;
- Expanding the availability of pretrial services agencies; and,
- Investing in community and pretrial diversion programs.