



# PRE-TRIAL IN VIRGINIA

Study Highlights

January 2019

The Pre-Trial Data Project consists of two phases:

1. Development of the cohort; and
2. Tracking of case outcomes:
  - Final case disposition;
  - Public safety; and,
  - Failure to appear.

DCJS data showed that 59% (16,964 of 28,711) of placements made to pretrial services agency supervision in FY18 were in conjunction with a secured bond.

- The remaining 41% (11,747 of 28,711) of placements were in conjunction with a personal recognizance or unsecured bond.

The number of indigent defendants in Virginia's criminal justice system is currently unknown.

## Virginia Pre-Trial Data Project

The Virginia Pre-Trial Data Project is an unprecedented, collaborative effort between all three branches of government and numerous state and local agencies, including the Virginia State Crime Commission, Virginia Criminal Sentencing Commission, Alexandria Circuit Court, Compensation Board, Department of Criminal Justice Services, Department of Corrections, Fairfax Circuit Court, Office of the Executive Secretary of the Supreme Court of Virginia, and the Virginia State Police.

The Crime Commission requested that staff answer the question of how effective various pre-trial release mechanisms are at ensuring public safety and appearance at court proceedings. Data was obtained from numerous sources to develop a cohort of nearly 23,000 adult defendants charged across Virginia during a one-month period (October 2017) whose final case dispositions were tracked through December 31, 2018. Release mechanisms to be examined include summons, personal recognizance bond, unsecured bond, and secured bond, along with certain conditions of release. The data will allow for comparisons to be made between type of release mechanism, type of offense, and locality across similarly situated defendants, including risk level.

The dataset will inform policy-making throughout the pre-trial process on such topics as (i) the effectiveness of various pre-trial release mechanisms, (ii) judicial officer decision-making in relation to bond and conditions of release, (iii) accuracy of the current pretrial risk assessment instrument (VPRAI-R), and (iv) the role of a pre-trial risk assessment instrument. It is anticipated that final results of this Project will be presented in 2019.

Crime Commission members endorsed the following recommendations relating to the Pre-Trial Data Project:

**Recommendation 1:** Amend the Virginia Code to create a new charge for contempt of court specifically for failure to appear (§§ 16.1-69.24 and 18.2-456).

**Recommendation 2:** Request that Crime Commission staff convene stakeholders to develop a plan for statewide case tracking across the criminal justice system and any other related systems. Recommendations to implement the plan will be provided by December 2019.

**Recommendation 3:** Request that the Office of the Executive Secretary of the Supreme Court of Virginia be included as part of Recommendation 2 in order to determine a method for tracking the number of criminal defendants statewide who are found to be indigent pursuant to Virginia Code § 19.2-159.



# Pretrial Services Agencies Update

Per DCJS data, of the 28,735 defendants placed on pretrial services agency supervision during FY18:

- 17,568 were placed without an investigation; and,
- 11,167 were placed following an investigation.

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Following arrest, nearly all defendants are taken before a magistrate, where the first bond hearing is conducted and a decision to detain or set the conditions of pre-trial release is made.

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There are currently 375 bail bondsmen in Virginia with an active license.

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During 2018, Crime Commission staff worked closely with the Department of Criminal Justice Services (DCJS) and stakeholders to address concerns identified with the administration and operation of pretrial services agencies. Staff provided oversight of the DCJS Pretrial Stakeholder Work Group and developed and disseminated over 2,000 surveys as part of a stakeholder needs assessment. While there continues to be broad support among local stakeholders for the use of pretrial services agencies, many of the concerns that staff identified during the previous year's study persisted, including (i) investigations not being conducted for all defendants eligible for pretrial services, (ii) release recommendations provided to judges being inconsistent at times with the facts and circumstances of an offense, and (iii) information not being provided to all judicial officers, including magistrates, as intended in the Pretrial Services Act. Staff withheld any recommendations pending the findings of the Pre-Trial Data Project.

## Pre-Trial Process

The pre-trial process encompasses the various stages of a case from the time a defendant is charged with an offense until the trial and/or sentencing of the matter. This time period includes the initial charge, any appearances before a magistrate or the court, bond hearings, and the determination of pre-trial release conditions. Staff found that while procedures at magistrate offices are generally uniform across the Commonwealth, pre-trial procedures relating to first appearance and bond hearings before the court vary by locality and can differ even amongst courts within the same locality. Staff also found that statewide regulations do not exist for the pre-trial use of GPS or similar tracking devices.

Bail bondsmen have a large presence during the pre-trial process. They guarantee a defendant's appearance at court proceedings, but are not responsible for supervising court-ordered conditions of release. DCJS has oversight of all bail bondsmen. In addition, the State Corporation Commission has oversight of surety bail bondsmen, who must also be licensed as property and casualty insurance agents. The criminal background licensing restrictions are less stringent for bail bondsmen than for other occupations regulated by DCJS. Additionally, a surety can obtain a *capias* from a judicial officer for the arrest of a defendant (principle) for any reason.

Crime Commission members unanimously endorsed the following recommendations relating to the pre-trial process:

**Recommendation 1:** Amend the Virginia Code to require magistrates to complete the existing "Checking For Bail Determinations" form and transmit it to the court (§ 19.2-121). This codifies current practice by magistrates.

**Recommendation 2:** Amend the Virginia Code to require that the basis of arrest must be stated by a surety when requesting a *capias* (§ 19.2-149).

**Recommendation 3:** Amend the Virginia Code to increase the penalty for carnal knowledge of a defendant by a bail bond company owner or agent from a Class 1 misdemeanor to a Class 6 felony (§ 18.2-64.2).

**Recommendation 4:** Request that Crime Commission staff continue to examine issues of uniformity within the pre-trial process.