



PRE-TRIAL PROCESS IN VIRGINIA

Study Highlights

January 2019

The Virginia Pre-Trial Data Project consisted 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 precise 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 a variety of 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 examined include summons, personal recognizance bond, unsecured bond, and secured bond, along with certain conditions of release such as pretrial services agency supervision. The data will allow for comparisons to be made between similarly situated defendants by type of release mechanism, offense, and locality.

The dataset will further help to 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) role of Virginia's current pre-trial risk assessment instrument (VPRAI-R), and (iv) the utility of a pre-trial risk assessment instrument in relation to bond determinations. Staff anticipates that findings from this study will be presented in Fall 2019.

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

Recommendation 1: Amend the Virginia Code to create a new charge of contempt of court specifically for failure to appear (§§ 16.1-69.24 and 18.2-456). This was enacted during the Regular Session of the 2019 General Assembly.

Recommendation 2: Request that Crime Commission staff convene stakeholders to develop a plan for statewide data systems integration and case tracking across the criminal justice system and any other related systems.

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.

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

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

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.

As of November 2018, there were 375 bail bondsmen in Virginia with an active license.

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Pretrial Services Agencies Update

During 2018, Crime Commission staff worked closely with the Virginia Department of Criminal Justice Services (DCJS) and stakeholders to address concerns identified with the administration and operation of pretrial services agencies. Staff developed and disseminated over 2,000 surveys as part of a stakeholder needs assessment and also provided oversight of the DCJS Pretrial Stakeholder Work Group. While there continues to be broad support among stakeholders for the use of pretrial services agencies, many of the concerns that staff identified during the previous year's study persist, including (i) pretrial investigations not being completed for all defendants eligible for pretrial services agency supervision, (ii) release recommendations provided to judges that are at times inconsistent 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 recommendations relating to pretrial services agencies due to the ongoing Virginia Pre-Trial Data Project.

Pre-Trial Process

The pre-trial process encompasses the various stages of a criminal 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, the determination of pre-trial release conditions, and compliance with those conditions. Staff found that while procedures at magistrate offices are generally uniform across the Commonwealth, procedures relating to first appearances and bond hearings vary before courts 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 electronic tracking devices.

Bail bondsmen have a large presence throughout the pre-trial process. Bondsmen guarantee a defendant's appearance at court proceedings and may impose conditions of supervision above those ordered by a judicial officer. The DCJS regulates all bail bondsmen. The State Corporation Commission also regulates surety bail bondsmen. The criminal background licensing restrictions are less stringent for bail bondsmen than for other professions regulated by DCJS. Challenges exist to providing oversight of bail bondsmen due to varying court practices and lack of communication between existing data systems. The surety on a bond can request the issuance of a *capias* for a defendant 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 *Checklist For Bail Determinations* form and transmit it to the court (§ 19.2-121). This was enacted during the Regular Session of the 2019 General Assembly.

Recommendation 2: Amend the Virginia Code to require the basis of arrest to be stated by a surety when requesting a *capias* (§ 19.2-149). This was enacted during the Regular Session of the 2019 General Assembly.

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.