Virginia Criminal Sentencing Commission

# VIRGINIA PRETRIAL DATA PROJECT: FINDINGS FROM THE 2021 AND 2022 COHORTS

2024

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2024

# Members of the Virginia Criminal Sentencing Commission

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**Judge Robert J. Humphreys,** Court of Appeals of Virginia
**Michon J. Moon, Ph.D.,** Director of Operations and Grants, The JXN Project

HON. EDWARD L. HOGSHIRE (RET.)
CHAIRMAN

# Commonwealth of Virginia

MEREDITH FARRAR-OWENS
DIRECTOR

100 NORTH NINTH STREET
RICHMOND, VIRGINIA 23219
TEL (804) 225-4398
FAX (804) 786-3934

## Supreme Court of Virginia
## Virginia Criminal Sentencing Commission

December 1, 2024

TO: The Honorable S. Bernard Goodwyn
Chief Justice of Virginia

The Honorable Glenn Youngkin
Governor of Virginia

The Honorable Members of the General Assembly of Virginia

Virginia's Pretrial Data Project was established in 2018 under the direction of the Virginia State Crime Commission as part of the Crime Commission's broader study of the pretrial system in the Commonwealth. The purpose of the Project was to address the significant lack of data available to answer important questions regarding Virginia's pretrial process. The Project was an unprecedented, collaborative effort among numerous agencies representing all three branches of government. Staff of the Virginia Criminal Sentencing Commission provided technical assistance to the Crime Commission during the course of the project. The 2021 General Assembly (Special Session I) passed legislation (House Bill 2110 and Senate Bill 1391) directing the Sentencing Commission to continue this work on an annual basis.

The legislation, now codified in § 19.2-134.1, requires the Sentencing Commission to submit a report on the Pretrial Data Project each December 1. As required, this report is respectfully submitted for your consideration. Please contact the Sentencing Commission should you have questions regarding any aspect of the Pretrial Data Project.

The Sentencing Commission wishes to sincerely thank the staff of the Virginia State Crime Commission who laid the groundwork for the collection of comprehensive pretrial data in Virginia.

Sincerely,

Edward L. Hogshire
Circuit Judge (Ret.)
Chair

# Staff of the Virginia Criminal Sentencing Commission

**Meredith Farrar-Owens**
Director

**Jody T. Fridley**
Deputy Director

**Thomas Y. Barnes**
Research Associate

**Alfreda A. Cheatham**
Data Processing Specialist

**Catherine Chen, Ph.D.**
Data Scientist

**Chang B. Kwon, Ph.D.**
Chief Methodologist

**Marc E. Leslie**
Research Associate

**Kimberly F. Thomas**
Training Associate

**Carolyn A. Williamson**
Research Associate

**Cassandra E. Wright**
Training/Research Associate

**Matthew Gilbert**
**Sally Johnson**
**Judy Nunnally**
**Mark O'Connell**
Research Assistants

# Table of Contents

# List of Tables

***Findings from Multi-Year Cohorts (CY2020 - CY2022)***

***Evaluating the Effects of Changes in Bail Policy in Virginia***



## List of Charts

# Acknowledgements

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Virginia State Crime Commission

Virginia State Police

Christina Arrington, Ph.D., Chief Methodologist
Virginia State Crime Commission

Tama Celi, Ph.D., Chief of Research
Virginia Department of Corrections

Jonathan Green, Magistrate System Coordinator
Office of the Executive Secretary of the Supreme Court of Virginia

Kari Jackson, LIDS Program Manager
Compensation Board

Michael Riggs, Director, Department of Judicial Information Technology
Office of the Executive Secretary of the Supreme Court of Virginia

Wesley Smallwood, Pretrial Services Coordinator
Virginia Department of Criminal Justice Services

# Executive Summary

Virginia's Pretrial Data Project was established in 2018 under the direction of the Virginia State Crime Commission as part of the Crime Commission's broader study of the pretrial system in the Commonwealth.[1] The purpose of the Project was to address the significant lack of data available to answer key questions regarding the pretrial process in Virginia. The Project was an unprecedented, collaborative effort among numerous state and local agencies representing all three branches of government. The Crime Commission's study focused on a cohort of individuals charged with a criminal offense during a one-month period (October 2017). The work was well received by lawmakers, and the 2021 General Assembly (Special Session I) passed legislation (House Bill 2110 and Senate Bill 1391) directing the Virginia Criminal Sentencing Commission to continue this work on an annual basis. Virginia's work in the area of pretrial data collection has begun to receive national attention.

This year, the Sentencing Commission examined individuals with pretrial contact events during Calendar Year (CY) 2021 and CY2022. A contact event is the point at which an individual comes into contact with the criminal justice system and he or she is charged with a criminal offense, thus beginning the pretrial process. As in previous years, for individuals with more than one contact event during the calendar year, only the first event was selected; however, the defendant's first contact event in a calendar year was excluded if it was identified as a pretrial outcome for an event that occurred during the previous calendar year. Individuals were tracked through disposition of the case or the end of the 15-month follow-up period, whichever came first. The Sentencing Commission adhered to the previously-established data collection methods. Data for the Project was obtained from eight different data systems. Compiling the data into a unified dataset requires numerous iterations of matching, merging and data cleaning to ensure accuracy when linking information from the respective data systems to each defendant in the cohort. More than 500 data elements were captured for each defendant, including demographics, charging details, criminal history records, pretrial release status, bond type and amount, court appearance by the defendant, new criminal arrest during the pretrial period, and final dispositions. The Commission captured additional prior record measures this year based on input from stakeholders.

The Sentencing Commission's data analysis, presented in this report, focuses on adult defendants whose contact event included a charge for a new criminal offense punishable by incarceration where a bail determination was made by a judicial officer (i.e., a magistrate or judge). Other defendants, such as those released on a summons, were not analyzed for this report. This report presents various descriptive findings for the selected

[1] See Virginia State Crime Commission. (2021). *Virginia Pretrial Data Project: Final Report.*

defendants, their key characteristics, how they proceeded through the pretrial system, and outcomes. This report also compares a number of measures across multiple years of data now available. When examining pretrial outcomes, it is important to consider what factors or combination of factors may be associated with success or failure while on pretrial release. Empirically-based risk assessment tools are commonly used to estimate the likelihood of success or failure in the community during the pretrial period. For the purposes of the Project, the Public Safety Assessment (PSA), a pretrial risk assessment tool developed by Arnold Ventures, is utilized. Using the PSA allows the Commission to calculate risk scores for all defendants in the cohort based on available automated data.

To date, the Sentencing Commission's work has been limited to using in-state criminal history records. This limitation affects the measurement of prior record, the estimation of risk based on the PSA, and outcome measures such as new criminal arrest during the pretrial period. Out-of-state criminal history records can only be obtained from the Federal Bureau of Investigation (FBI). The Commission previously submitted the required applications and all related documents to the FBI and, after lengthy delays, the FBI has finally approved the Commission's request. The Commission is working with the FBI to standardize data exchange procedures. As this process is not yet complete, out-of-state records could not be included in this year's report. The Commission expects that out-of-state criminal history records will be available next year and will greatly enhance the Pretrial Data Project.

This year, the Sentencing Commission conducted a special study to examine the effects of recent changes in bail policy in Virginia. In 2021, the General Assembly passed legislation to abolish the presumptive denial of bail for defendants charged with certain offenses or who otherwise met specified criteria (Senate Bill 1266, 2021 General Assembly, Special Session I). The Commission analyzed the impact of this policy change on various facets of Virginia's pretrial system, including pretrial release, release on secured bond, failure to appear, and new criminal arrest during the pretrial period.

Virginia's Pretrial Data Project continues to serve as a valuable resource for policy makers, practitioners, and academics. Findings from the Commission's ongoing analyses as well as other researchers may be used to inform policy and practice and provide a platform for discussion of pretrial matters in the Commonwealth today and in the years to come.

## KEY FINDINGS

Presented below are key descriptive findings from the Commission's analysis of CY2020-CY2022 pretrial data. The findings are generally consistent from year to year; however, a few interesting trends have emerged. These are noted below.

- In Virginia, the vast majority of defendants are ultimately released from custody during the pretrial period. Approximately one in ten defendants are detained throughout the pretrial period. The overall pretrial release rate increased from 86.8% in CY2018 to 89.5% in CY2020, when the COVID pandemic began. The overall pretrial release rate has since declined to 88.3% in CY2022 (Chart 5). The overall release rate remains higher than CY2018-CY2019 levels.

- Over half of defendants each year were released on a personal recognizance or unsecured bond. The percentage of defendants released on personal recognizance or unsecured bond increased from 57.5% in CY2020 to 59.2% in CY2022 (Table 3).

- Overall, secured bond amounts at the time of release were consistent from CY2020 to CY2022. Secured bond amounts generally did not vary widely across sex, race, age, or indigency status, or year of release (Table 7).

- Approximately 45% to 48% of defendants were charged with a felony offense, while 51% to 55% were charged with a misdemeanor or special class offense as the most serious offense in the contact event. Throughout CY2020-CY2022, the most common felony charge was a drug offense. Since CY2020, assault has been the most common misdemeanor charge (Table 2).

- The pretrial release rate for defendants charged with felony offenses is lower than the release rate for those charged with misdemeanors. During CY2021 and CY2022, between 79% and 81% of individuals facing felony charges were released pretrial (Tables 4 and 5). Among those charged with felonies, individuals with felony charges for drug, assault, burglary, kidnapping or other crimes against a person were more likely to be detained throughout the pretrial period.

- When charged with a felony or violent offense, females were more likely than males to be released. Similarly, when charged with a felony or violent offense, Whites were released more often than Blacks. Non-indigent defendants charged with a felony or violent offense were much more likely to be released than indigent defendants charged with the same type of offense (Tables 6-1 to 6-8). It is important to note that many factors, including prior record, affect pretrial release rates.

- Of released defendants, between 16.1% and 17.1% each year were ordered to receive supervision from a Pretrial Services Agency (Table 8). A larger percentage of defendants placed under pretrial supervision requirements received a secured bond compared to those who were released and not placed under pretrial supervision (Table 9).

- Across each year examined, a large majority of released defendants were not charged with failure to appear at court proceedings for the offense(s) in the contact event (Chart 7). The failure-to-appear rate decreased from 16.6% in CY2021 to 15.7% in CY2022; however, the rate remains higher than in prior years (12.4% and 12.6% in CY2018 and CY2019, respectively).
- Similarly, the majority of released defendants were not arrested during the pretrial period for an in-state offense punishable by incarceration (Chart 7). The new-arrest rate decreased from a high of 23.5% in CY2020 to 20.6% in CY2022. The CY2022 new-arrest rate is lower than the rate observed during the pre-pandemic period (CY2018-CY2019).
- During CY2020-CY2022, approximately 52% of defendants were convicted of at least one offense in the contact event (original or reduced charge). The conviction rate has been consistent since CY2020 (Table 19).
- Public Safety Assessment (PSA) scores for both failure-to-appear (FTA) and new criminal arrest (NCA) were quite similar across the CY2020-CY2022 cohort groups. For both FTA and NCA measures, the largest share of defendants were classified as low risk, having a score of 1 or 2 (Tables 10 and 11).
- Each year, defendants with higher PSA scores were less likely to be released than those with lower scores. A larger percentage of defendants classified as high risk (PSA scores of 5 or 6) were released in CY2020 than in previous years; this percentage has since declined but has not returned to CY2018 levels (Tables 13 and 14).
- The percentage of released defendants charged with failure to appear or who were arrested for a new in-state offense punishable by incarceration during the pretrial period increased as the defendants' PSA scores increased, suggesting that the PSA may be a useful tool in pretrial release decision making (Tables 17 and 18).
- While overall rates for failure to appear and new in-state arrest have decreased since CY2020, the failure to appear rate for individuals classified as high risk (PSA FTA scores of 5 or 6) has increased markedly (Tables 17 and 18).
- Results of a sophisticated empirical study conducted by the Commission indicate that the elimination of presumptive denial of bail in 2021 increased pretrial release among defendants who would have been subject to the provision (had it still been in effect) by 3.8% on average. This finding is highly statistically significant. Results also suggest that the likelihood of failure to appear and new criminal arrest may have increased among affected defendants after the policy change; however, such estimations are only marginally significant and the magnitude of the estimated effects are small. Results of the study and two potential shortcomings (the exclusion of defendants for whom the applicability of presumptive denial of bail could not be determined with certainty and the inability to include out-of-state criminal records) are discussed in detail in the chapter entitled "Evaluating the Effects of Changes in Bail Policy in Virginia."

# Introduction

Virginia's Pretrial Data Project was established in 2018 under the direction of the Virginia State Crime Commission as part of the Crime Commission's broader study of the pretrial system in the Commonwealth.[2] The Crime Commission discovered that many critical questions regarding Virginia's pretrial system could not be answered due to the significant lack of data available. The Pretrial Data Project was created to address this need. The Project was an unprecedented, collaborative effort among numerous state and local agencies representing the Executive, Legislative and Judicial branches. The Project laid the groundwork for the collection of comprehensive data in order to better understand all aspects of the pretrial process. The Crime Commission's study focused on a cohort of individuals charged with a criminal offense during a one-month period (October 2017). The work was well-received by lawmakers, and the 2021 General Assembly (Special Session I) passed legislation (House Bill 2110 and Senate Bill 1391) directing the Virginia Criminal Sentencing Commission to continue this work on an annual basis. The legislation, now codified in § 19.2-134.1, requires the Sentencing Commission to submit a report on the Pretrial Data Project each December 1. The Sentencing Commission also must create and maintain an interactive data dashboard tool on its website that will display aggregated data based on characteristics or factors selected by the user. Lastly, the Project datasets (with all personal/case identifiers removed) must be made available on the Commission's website. The Pretrial Data Project will provide valuable data for policy makers, agency and program administrators, and academic researchers and could become a model for other states interested in examining the pretrial process.

The Sentencing Commission's first report on Virginia's pretrial data collection project was submitted to the General Assembly in 2022.[3] The study focused on individuals with pretrial contact events during Calendar Year (CY) 2018. That period of time was selected in order to establish a baseline of pretrial data. Establishing a baseline allows researchers to better assess the impact of subsequent events (such as the COVID-19 pandemic) or changes in laws or policies (such as the elimination of the presumptive denial of bail from the *Code of Virginia*). The report submitted in 2023 reflected individuals with pretrial contact events during CY2019 and CY2020.[4] For the newest study, individuals with pretrial contact events during CY2021 and CY2022 were selected. A contact event is the point at which an individual comes into contact with the criminal justice system and he or she is charged with a criminal offense, thus beginning the pretrial process. As in previous years, for individuals with more than one contact

[2] Virginia State Crime Commission. (2021). *Virginia Pretrial Data Project: Final Report.*
[3] Virginia Criminal Sentencing Commission. (2022). *Virginia Pretrial Data Project: Findings from the 2018 Cohort.*
[4] Virginia Criminal Sentencing Commission. (2023). *Virginia Pretrial Data Project: Findings from the 2019 and 2020 Cohorts.*

event during the calendar year, only the first event was selected; however, the defendant's first contact event in a calendar year was excluded if it was identified as a pretrial outcome for an event that occurred during the previous calendar year. This enhancement to the selection criteria is discussed in further detail in the *Overview of Methodology* chapter. To be consistent with prior analyses, individuals in the cohorts were tracked until the disposition of the case or the end of the 15-month follow-up period, whichever occurred first.

Data for the Project was again obtained from numerous criminal justice agencies in Virginia. The Sentencing Commission's data collection approach continues to utilize the methods established for the original study overseen by the Crime Commission. Compiling the data into a unified dataset requires numerous iterations of matching, merging and data cleaning to ensure accuracy when linking information from the respective data systems to each defendant in the cohort. This process is intensive and requires meticulous attention to detail. More than 500 data elements were captured for each defendant, including demographics, charging details, criminal history records, pretrial release status, bond type and amount, court appearance by the defendant, new criminal arrest during the pretrial period, and final dispositions. The Commission captured additional prior record measures this year based on input from stakeholders. For example, the Commission added prior record measures that capture convictions but exclude previous probation and suspended sentence violations. The Commission also added a factor to measure the time between the current contact and the most recent prior conviction. This factor can be used to identify defendants who have been crime free for an extended period of time.

Overall, the CY2021 and CY2022 cohorts contain more than 265,000 and 281,000 adult defendants, respectively. Defendants were categorized based on the nature of their first contact event. As with previous reports, the bulk of this report focuses on defendants whose contact event included a new criminal offense punishable by incarceration where the bail determination was made by a judicial officer (i.e., a magistrate or judge). Other defendants, such as those released on a summons or whose contact was related to a pre-existing court obligation, were not analyzed for this report. Defendants who could not be classified or tracked due to insufficient or conflicting data were also excluded from subsequent analyses.

The next chapter in this report presents a descriptive analysis of pretrial defendants from the multi-year dataset (CY2020-2022), including demographic characteristics, the most serious charged offense, pretrial release mechanisms, pretrial release rates, secured bond amount, pretrial supervision status, risk assessment scores, pretrial outcomes (failure to appear or new criminal arrest), and final disposition of the charges. The report provides a snapshot of pretrial defendants at key points in the pretrial process. Trends or differences across years are discussed. It is important to note that descriptive analysis such as this cannot explain why differences may exist across groups of defendants, nor can it suggest any causal relationships. Additional research is necessary in order to provide a deeper understanding of the relationships among factors and the impact each factor may have on pretrial decision making and outcomes.

The chapter following the descriptive analysis examines the effects of recent changes in bail provisions in Virginia. In 2021, the General Assembly passed legislation to abolish the presumptive denial of bail for defendants charged with certain offenses or who otherwise met specified criteria (Senate Bill 1266, 2021 General Assembly, Special Session I). This year, the Sentencing Commission conducted both descriptive and causal analyses to examine the extent to which eliminating the presumptive denial of bail has impacted aspects of Virginia's pretrial system, including pretrial release, release on secured bond, failure to appear, and new criminal arrest during the pretrial period. Findings from the Sentencing Commission's analysis will contribute to the general understanding of the dynamics between changes in bail policy and pretrial decisions and outcomes.

As the Project continues, the Sentencing Commission will continue to solicit input from the policy makers, agency and program administrators, and other stakeholders in the pretrial community. This is an important aspect of the Commission's work. Moreover, the Sentencing Commission will continue to explore ways to expand and improve the information available through the Pretrial Data Project.

# Overview of Methodology

When established in 2018, the Pretrial Data Project laid the groundwork for the collection of comprehensive data across all aspects of the pretrial process. The approach developed by the Crime Commission, with technical assistance from Sentencing Commission staff, proved to be a successful, albeit intensive, way to compile and examine pretrial data in Virginia. The Sentencing Commission has largely replicated the approach established by the Crime Commission in the original study of the October 2017 cohort. The Project methodology is discussed in this section. The Project can be broken into distinct stages. These are:

1. Selection of the study cohort;
2. Collection of relevant data from other agencies for each individual in the cohort;
3. Matching and merging records from numerous criminal justice data systems into a unified dataset;
4. Quality control and data cleaning to ensure accuracy;
5. Estimating risk; and
6. Tracking outcomes.

## SELECTION OF STUDY COHORT

For the previous studies, the Sentencing Commission examined individuals with pretrial contact events in CY2018, CY2019 and CY2020. The Commission began with CY2018 in order to establish a baseline. Establishing a baseline allows researchers to better assess the impact of subsequent events (such as the COVID-19 pandemic) and subsequent changes in laws or policies (such as the elimination of the presumptive denial of bail from the *Code of Virginia*). For the current study, the Sentencing Commission selected individuals with pretrial contact events during CY2021 and CY2022. The continued accumulation of the pretrial data allows for comparisons across years regarding pretrial decision making and outcomes.

The primary unit of analysis in the study is a contact event. A contact event is the point at which an individual comes into contact with the criminal justice system and he or she is charged with a criminal offense, thus beginning the pretrial process. The cohort does not include juvenile offenders who were arrested and charged with criminal offenses. For individuals with more than one contact event during a given calendar year, only the first event was selected. This allows for easier tracking of the individual through the pretrial process without the complexities that may arise due to subsequent, and possibly overlapping, pretrial processes for the same defendant.

Last year, when examining the CY2019 and CY2020 cohorts, the Commission established another selection criterion, which was also utilized for the current study. For CY2019-CY2022 cohorts, the first contact event in a calendar year was excluded if it was identified as a pretrial outcome for an event that occurred during the previous calendar year. For example, this may occur if an individual had a contact event in one year that resulted in his release during the pretrial period and, while on pretrial release, the individual was arrested for a new criminal offense sometime during the following calendar year. The new criminal arrest during the pretrial release period is considered an outcome of the original event. The Sentencing Commission previously found that events excluded for this reason accounted for only 6% of all defendants initially selected for the descriptive analysis; moreover, the underlying demographic characteristics of the excluded defendants were not different from the overall cohort. While the CY2018 cohort does not have the benefit of data from previous years, the general insights about year-to-year changes in pretrial measures and outcomes are not significantly affected by the exclusion of cases based on this new criterion.

Overall, the CY2021 and CY2022 cohorts contain 265,838 and 281,277 adult defendants, respectively. Defendants were categorized based on the nature of their first contact event. As with previous reports, the Sentencing Commission's analysis focuses on defendants whose contact event included a new criminal offense punishable by incarceration where the bail determination was made by a judicial officer (i.e., a magistrate or judge). Other defendants, such as those released on a summons or whose contact was related to a pre-existing court obligation, were not analyzed. See Charts 2, 3 and 4 for additional detail regarding types of contact events that were excluded from the descriptive analysis.

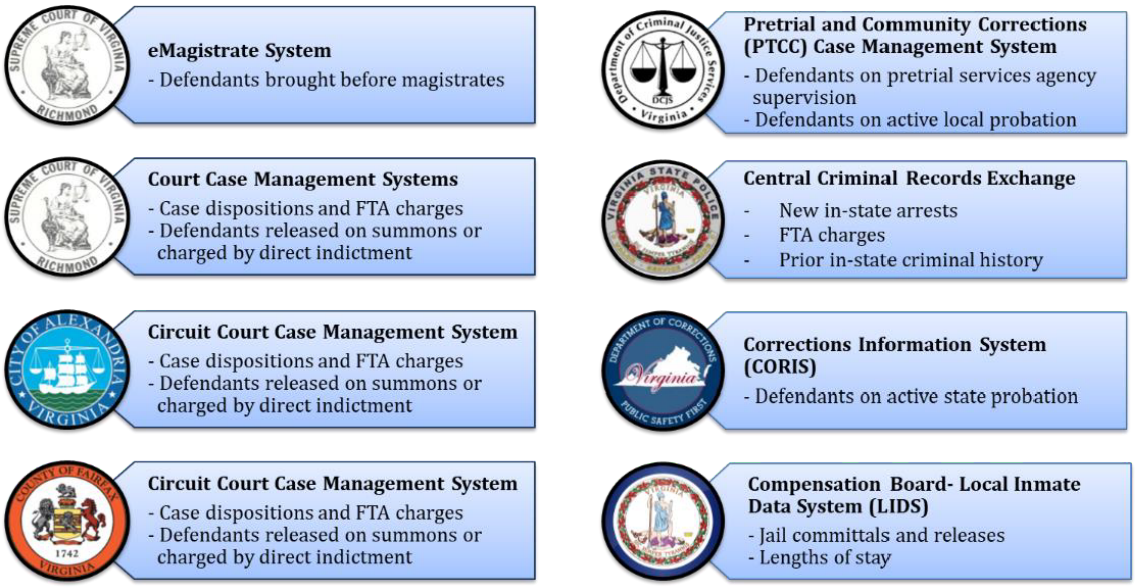
## DATA COLLECTION

During the development of the Pretrial Data Project in 2018, the Sentencing Commission identified state and local agency data systems that contain relevant and reliable information on pretrial defendants and the pretrial process. The Commission has continued to request data from the same state and local agencies for the current study. These agencies included:

- Alexandria Circuit Court;
- Fairfax County Circuit Court;
- Compensation Board;
- Office of the Executive Secretary of the Supreme Court of Virginia;
- Virginia Department of Corrections;
- Virginia Department of Criminal Justice Services; and
- Virginia State Police.

The specific systems at each agency contributing data to the Project appear in the chart below, and the primary elements provided by each are shown.

### Chart 1 Virginia State and Local Agency Data Systems in Project Dataset




Source: Virginia State Crime Commission. (2021). *Virginia Pretrial Data Project: Final Report.*

There are three primary ways that an individual has contact with the criminal justice system and he or she is charged with a criminal offense: 1) a law enforcement officer issues a summons to an individual requiring them to appear in court, 2) a law enforcement officer makes a custodial arrest and brings the individual in front of a magistrate, or 3) an individual is directly indicted for a felony in Circuit Court and does not appear before a magistrate to prior his/her first court appearance. Thus, the Court Case Management Systems and the e-Magistrate System were key in identifying individuals who had contact with the criminal justice system and entered the pretrial process. Because the Circuit Court clerks in Fairfax and Alexandria do not participate in the statewide Court Case Management System, the necessary data was requested from those specific clerks' offices. For defendants who were directly indicted and also appeared before a magistrate, the Sentencing Commission took steps to ensure that these defendants were not double-counted in the cohort.

Beginning with the CY2018 cohort, the Sentencing Commission improved methods for identifying summons cases. These improvements were necessitated by missing dates in the General District Court Case Management System. These improvements resulted in more comprehensive data for cases initiated by summons.

## MATCHING AND MERGING RECORDS

Criminal justice data systems are not integrated in Virginia. Compiling the data for the Project requires multiple iterations of matching, merging and data cleaning, steps that are necessary to ensure accuracy when connecting information from the respective data systems to individual defendants in the cohort. This process is staff intensive and requires meticulous attention to detail throughout.

The Court Case Management Systems and the e-Magistrate system are charge based, meaning that every charge is a separate record in the system. The inclusion of a charge in the study was based on the date the individual appeared before a magistrate, or the summons date for individuals issued a summons (or, if missing, the court filing date), or the arrest date (or, if missing, the court filing date) for individuals directly indicted in Circuit Court. These contact dates were used regardless of the date on which the criminal offense was alleged to have been committed. Charges were then collapsed into contact events, such that all charges associated with the same person on the same contact date were grouped together.[5] This process was not an easy one due to the lack of universal personal identifiers across all state agencies, missing information, and human error when the data was entered into the system (e.g., slight misspelling of the defendant's name or the inversion of two digits in the birthdate). To address these issues, Sentencing Commission staff used an algorithm based on a similarity index to match records with a high degree of accuracy (although no such algorithm can guarantee 100% accuracy). Through this process, the Sentencing Commission identified the individuals for the study cohort. For individuals with more than one contact event during a calendar year, only the first event in the calendar year was selected. This allows for easier tracking of the individual through the pretrial process without the complexities that may arise due to subsequent, and possible overlapping, pretrial processes for the same defendant. As noted in the previous section, a small percentage of individuals also were excluded because the first contact event in the calendar year was identified as a pretrial outcome for an event that occurred during the previous year. Previous analysis revealed that, out of all the charge-based records, about 70% were associated with first contact events; this indicates that about 30% of criminal charges were associated with persons arrested multiple times during the year.

Information from the various data systems was then used to track each defendant through the pretrial process to final disposition of the case or the end of the follow-up period, whichever came first. For the CY2021 cohort, the follow-up period ended on March 31, 2023; for the CY2022 cohort, the follow-up period ended on March 31, 2024. For example, the e-Magistrate system provided considerable detail regarding

[5] For example, for an individual brought by law enforcement to appear before a magistrate, the contact event includes all charges against an individual heard together in the same jurisdiction on the same day and having the same CBR number ("Commit, Bond, Release") in the e-Magistrate System.

the initial bail decision of the magistrate and, for many defendants, bail information at release. The Local Inmate Data System (LIDS) was used to confirm whether or not a defendant was released from jail during the pretrial period. The Pretrial and Community Corrections (PTCC) Case Management System was used to identify defendants who received pretrial supervision. Records from the Court Case Management Systems were used to determine final disposition for the charges in the contact event.

Data provided by the Virginia State Police Central Criminal Records Exchange (CCRE) was used to compute various measures of prior record for each defendant. Obtaining prior record information is important because the individual's criminal history may affect pretrial decisions regarding the defendant's release. It must be noted that, to date, the Project has been limited to in-state criminal history. Virginia is a Criminal Justice Information Services (CJIS) Systems Agency signatory state and has agreed to adhere to the Federal Bureau of Investigation (FBI) CJIS policies, which include a prohibition on disseminating out-of-state criminal history records for non-criminal justice (i.e., non-investigative) purposes. Research is not one of the authorized purposes. Therefore, the Sentencing Commission cannot receive out-of-state criminal history data from the Virginia State Police.

In order to address the current limitation regarding criminal history records, the Sentencing Commission has made considerable efforts to obtain out-of-state criminal history data for the Project. To obtain out-of-state criminal history information, an agency must submit a detailed application to the Federal Bureau of Investigation (FBI), describing the project and why the out-of-state criminal history data is needed. The FBI's Institutional Review Board (IRB) determines if the request is granted. The Commission first submitted the required application and supporting documents to the FBI in 2023. After lengthy delays, the FBI has finally approved the Commission's request. The Commission is currently working with the FBI to standardize data exchange procedures. As this process is not yet complete, out-of-state records could not be included in the Project this year. The Commission expects that out-of-state criminal history records will be incorporated into pretrial data in 2025.

## QUALITY CONTROL AND DATA CLEANING

As noted above, compiling the data for the Project is a rigorous process and requires painstaking attention to detail. The Sentencing Commission has developed a substantial amount of computer programming to perform much of the matching and merging of data through multiple stages. However, this requires numerous rounds of matching, merging and data cleaning to ensure correct information for each defendant is linked together. This means that data are reviewed for completeness and accuracy at each stage throughout the process and, if relevant information is discovered in another dataset, data incorporated in previous stages are corrected or updated.

## ESTIMATING RISK

When examining pretrial outcomes, it is important to consider what factors or combination of factors may be associated with success or failure while on pretrial release. Empirically-based risk assessment tools are commonly used at various stages within the criminal justice system to assist in making decisions related to individual defendants.[6] Studies have consistently found that validated actuarial risk assessment tools combined with professional judgment produce better outcomes than subjective professional judgment alone.[7] Pretrial assessment tools have been used in a variety of places to assist judicial officers during the bail determination process in evaluating defendants' probability for court appearance or the likelihood of remaining arrest-free if released.[8]

For initiatives like Virginia's Data Project, it is critical to estimate the likelihood of success or failure in the community during the pretrial period in a uniform manner across all defendants so that comparisons can be made between similarly-situated defendants. For the purposes of the Project, the Public Safety Assessment (PSA) was used. The PSA is an actuarial pretrial assessment tool developed by Arnold Ventures that has been validated in a number of states/localities outside of Virginia.[9] Unlike some other tools, the PSA does not require an interview with the defendant. Using available automated data, the Sentencing Commission retroactively applied PSA calculations across the entire cohort using defendants' current offenses and in-state criminal history. For each

[6] See Hamilton, M. (2020). *Risk assessment tools in the criminal justice system – theory and practice: A resource guide*. Washington, DC: National Association of Criminal Defense Lawyers. Available at https://www.nacdl.org/getattachment/a92d7c30-32d4-4b49-9c57-6c14ed0b9894/riskassessmentreportnovember182020.pdf.

[7] See, e.g., Ægisdóttir, S., White, M. J., Spengler, P. M., Maugherman, A. S., Anderson, L. A., Cook, R. S., … Rush, J. D.(2006). The meta-analysis of clinical judgment project: Fifty-six years of accumulated research on clinical versus statistical prediction. *The Counseling Psychologist*, *34*(3), 341–382; Andrews, D. A., Bonta, J., & Wormith, J. S. (2006). The recent past and near future of risk and/or need assessment. *Crime & Delinquency, 52*(1), 7-27; Jung, J., Concannon, C., Shroff, R., Goel, S., & Goldstein, D.G. (2020). Simple rules to guide expert classifications. *Journal of the Royal Statistical Society, 183*(3), 771-800; National Institute of Justice. (2001). *Pretrial services programming at the start of the 21st century: A survey of pretrial services programs*. Washington: Office of Justice Programs, U.S. Department of Justice.

[8] See, e.g., Stanford Pretrial Risk Assessment Tools Factsheet Project for an overview of various pretrial risk assessment tools,available at https://law.stanford.edu/pretrial-risk-assessment-tools-factsheet-project/; See also, for general overview, e.g., 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, 443-467; Mamalian, C.A. (2011). State of the science of pretrial risk assessment. Washington, DC: Department of Justice, Bureau of Justice Assistance and the Pretrial Justice Institute. Retrieved from: https://bja.ojp.gov/sites/g/files/xyckuh186/files/Publications/PJI_PretrialRiskAssessment.pdf.

[9] See Advancing Pretrial Policy & Research (APPR). About the Public Safety Assessment at https://advancingpretrial.org/psa/about/

defendant, the Commission computed a score for each of the three PSA scales: the likelihood of Failure to Appear (FTA), the likelihood of New Criminal Arrest (NCA), and the likelihood of New Violent Criminal Arrest (NVCA).[10]

For the original study, the Crime Commission consulted with the Virginia Criminal Sentencing Commission, the Virginia Department of Criminal Justice Services, and Arnold Ventures (formerly the Laura and John Arnold Foundation) to develop a list of violent offenses for purposes of assigning PSA scores to defendants in the cohort. The Virginia Department of Criminal Justice Services (DCJS) is currently pilot testing the PSA instrument in select jurisdictions in the Commonwealth. DCJS established a PSA work group, consisting of numerous stakeholders, to assist in this process. The Sentencing Commission has consulted with the PSA work group to refine and update the list of the violent offenses.

There are two limitations to using the PSA to measure risk. First, because out-of-state criminal history could not be obtained for the Project, the retroactive calculation of PSA scoring does not include out-of-state arrests and convictions. Because the FBI recently approved the Commission's request for out-of-state records, this limitation should be addressed beginning in 2025. Second, the retroactive application of PSA scoring does not include all court responses to a defendant's failure to appear. For the purposes of the PSA, failure to appear refers to a person missing a pretrial court hearing and the court, in response, issuing a warrant or capias or taking similar action.[11] Due to current data limitations, retroactive application of PSA scoring can only identify failure to appear if a charge for failure to appear, or a charge for contempt of court for failure to appear, is filed. The Sentencing Commission will work to address these limitations to the extent possible as the Project moves forward.

Debate over the use of pretrial risk assessment tools exists. This report does not offer a position on the use of pretrial risk assessment tools in the decision making process. For a discussion of these debates and the arguments put forth by proponents and critics, see the Virginia State Crime Commission's *2021 Virginia Pretrial Data Project: Final Report.*

[10] Staff complied with the PSA Core Requirements (https://advancingpretrial.org/terms/) by adhering to the PSA Scoring Manual Implementation Guide (11A) obtained from https://advancingpretrial.org/implementation/guides/. The PSA Scoring Manual was used in a manner consistent with instructions, templates, or other guidance provided by LJAF regarding: data used to score the PSA; definitions of factors; weighting, inclusion and exclusion of factors; and, formulas for scoring or calculation of PSA scores. Sentencing Commission staff made a good faith effort in complying with PSA standards and instructions when assigning PSA risk levels to defendants in the cohort.

[11] See Advancing Pretrial Policy & Research (APPR). About the Public Safety Assessment – How It Works at https://advancingpretrial.org/psa/factors/#psa-factors

## TRACKING OUTCOMES

Two primary measures of pretrial outcomes were calculated for the Pretrial Data Project. The first outcome measure captures whether or not the defendant appeared at all court proceedings for the charges associated with the contact event. For this measure, the Sentencing Commission examined the data to determine if the defendant was charged with failure to appear, or contempt of court for failing to appear, during the pretrial period.[12]

The second measure captures whether or not the defendant had a new in-state arrest during the pretrial period for an offense punishable by incarceration. For this measure, the Sentencing Commission examined data from the CCRE system provided by the State Police and the Court Case Managements Systems. The Sentencing Commission took additional steps to ensure, to the extent possible, that the new arrests were based on offenses alleged to have been committed during the pretrial period (i.e., the arrest was not associated with an earlier offense committed prior to the current pretrial period). Defendants were tracked through disposition of the case or the end of the 15-month follow-up period, whichever came first. This measure is limited to new in-state arrests because, as noted above, out-of-state criminal history records have not yet been obtained for the Project.

The two outcomes are separate and distinct. Any new charge that was specifically for failure to appear or a contempt of court charge that contained descriptive information indicating that it related specifically to failure to appear was analyzed as part of the court appearance outcomes. These charges are excluded to the extent possible from the new arrest outcome measure. However, there may have been new charges stemming from a failure to appear that were analyzed within the new arrest outcomes because it

[12] Charges of failure to appear include violations of §§ 19.2-128, 18.2-456, 16.1-69.24, 29.1-210, 46.2-936, 46.2-938, or 19.2-152.4:1 alleging that the defendant failed to appear prior to the final disposition of the contact event. Charges under §§ 16.1-69.24 and 46.2-938, as well as general contempt of court charges under § 18.2-456, were only included if the charge description indicated that offense charge was based on a failure to appear. A methodology could not be developed to determine if all failure to appear charges for defendants in the cohort were directly related to charges in the target contact event. However, in a previous study, the Sentencing Commission was able to determine that approximately 80% of defendants charged with failure to appear during the pretrial period did not have a pending criminal charge at the time of the contact event. Approximately 20% of the defendants charged with failure to appear during the pretrial period did have a pending charge at the time of their target contact event, but it was unclear if the new failure to appear charge was related to a pending criminal charge or to the target contact event. It was also determined that, at most, 6% of failure to appear charges during the pretrial period may have been related to a civil matter (i.e., failure to pay child support). Finally, if the defendant was arrested for a new offense and subsequently charged with failure to appear for that offense during the pretrial period, the Commission was not able to clearly determine whether the failure to appear charge was related to the target contact event or to the new offense.

was not clear that the charge specifically related to failure to appear. For example, a new charge under the general contempt statute (§ 18.2-456) could have been related to failure to appear or to failure to comply with an order of the court, such as a pretrial supervision violation. If the new charge under the general contempt statute did not indicate the specific basis of the charge, then the new contempt charge was included within the new arrest outcomes. The Crime Commission identified this issue during its study of the pretrial process and ultimately endorsed legislation that was enacted in 2019 to clarify whether charges under § 18.2-456 related to failure to appear or to some other form of contempt of court. *See* 2019 Va. Acts. Ch. 708.

## LIMITATIONS

In addition to the limitations described above, other limitations should be noted. Due to the limitations of existing data systems, the Project dataset does not capture many elements that might be useful in a comprehensive study of the pretrial system. Furthermore, the data elements that are included in the dataset may be subject to limitations based on how each factor is defined or captured within its respective data system. This may affect how the findings should be interpreted and the extent to which statewide findings can be generalized.

Most findings presented in this report are based on descriptive analysis of statewide data. Caution should be used in trying to draw conclusions or inferences based on descriptive analysis alone. Descriptive analysis cannot explain why differences may exist across groups of defendants, nor can it suggest any causal relationships. Additional research is necessary to examine the relationships among factors and the impact each factor may have on pretrial decisions and pretrial outcomes. Advanced statistical methods must be utilized to determine whether there are factors that moderate relationships between factors, and if so, the extent to which certain factors or combinations of factors predict various outcomes.

While aggregate findings presented in this report are an excellent method to examine a statewide snapshot of pretrial defendants at key points in the pretrial process, this approach cannot address variations across localities. Statewide descriptive findings should not be generalized to the individual locality level. Full understanding of Virginia's pretrial process is hindered by the inability to obtain out-of-state criminal history records.

This limitation affects the measurement of prior record, the estimation of risk based on instruments such as the PSA, and outcome measures related to new criminal arrests. Locality-level data for jurisdictions bordering other states and the District of Columbia may be particularly susceptible to this limitation. However, in-state criminal history may also be incomplete as some individuals charged with an offense may not have been fingerprinted, meaning that particular charge/conviction would not be associated with the individual in the State Police CCRE system (State Police use fingerprints to associate arrests/convictions with individuals).

Caution is urged when examining localities or groups with a very small number of contact events. Due to the small number of cases, the data may not provide adequate representation of the locality or group. Small size implies larger variance, and a few outliers may influence the distribution. To make inferences on groups with small size, more data or more advanced statistical methods are needed to overcome the potential issue of large variance.

# Classification of Defendants in the CY2020, CY2021 and CY2022 Cohorts

This report presents results from the CY2020, CY2021, and CY2022 cohorts. Charts 2, 3, and 4 use the classification scheme developed by the Sentencing Commission to categorize defendants based on the nature of their first contact event. The CY2020 cohort, compiled last year, contained 271,377 individuals (Chart 2). These defendants were categorized as follows:

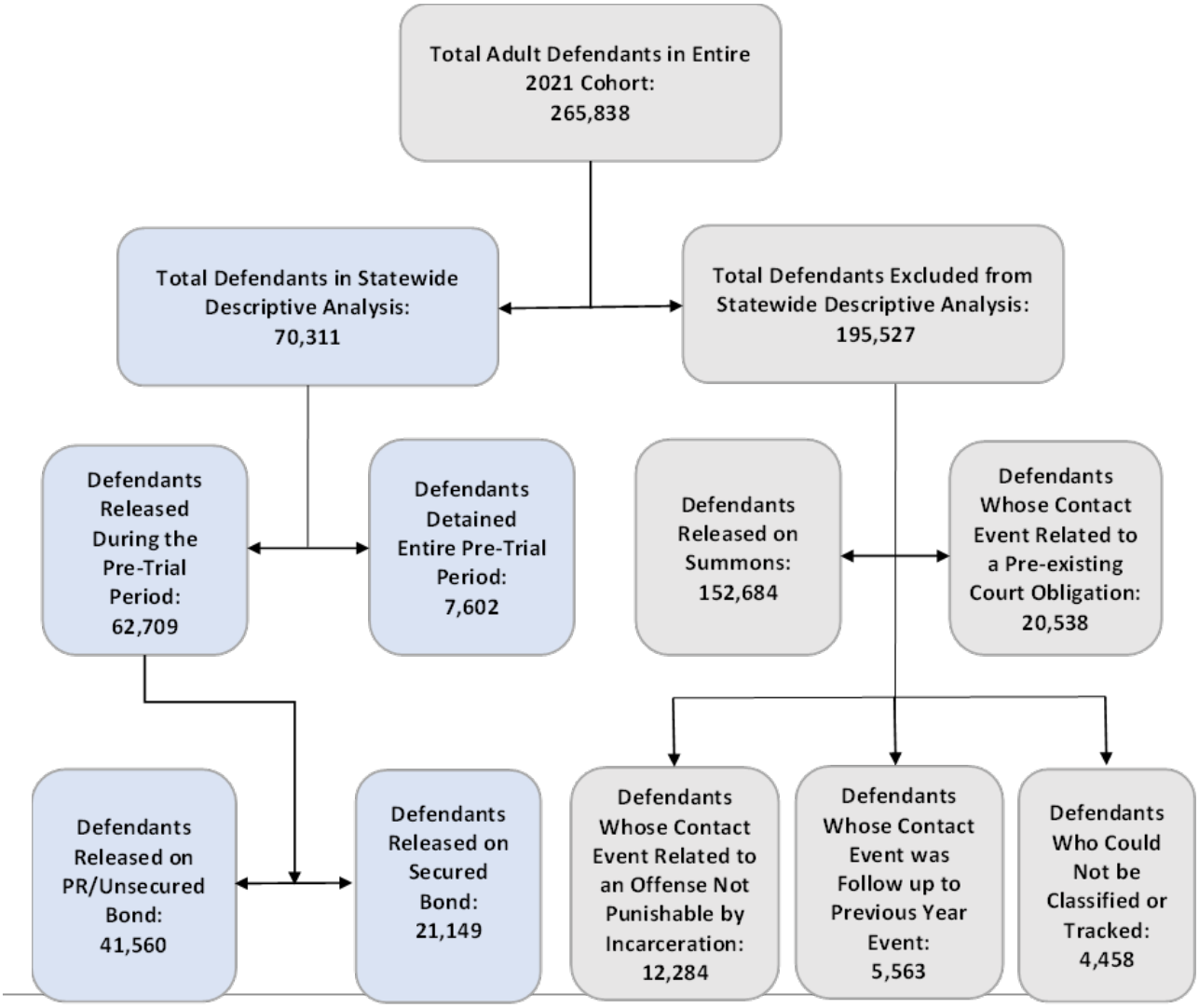
- 75,537 defendants whose contact event included a new criminal offense punishable by incarceration where the bail determination was made by a judicial officer;
- 156,401 defendants whose contact event was for a new criminal offense punishable by incarceration for which the defendant was released by a law enforcement officer on a summons;
- 18,704 defendants whose contact event was solely related to a pre-existing court obligation, such as a probation violation, failure to appear, or contempt of court;
- 12,107 defendants whose contact event was for a new criminal offense that was not punishable by incarceration;
- 4,745 defendants whose contact event was later identified as a follow-up to a contact event that occurred the previous year; and
- 5,883 defendants who could not be classified or tracked due to insufficient data.

**Chart 2: Classification of Defendants in the CY2020 Cohort**

The CY2021 cohort contains 265,838 individuals (Chart 3). These defendants were categorized as follows:

- 70,311 defendants whose contact event included a new criminal offense punishable by incarceration where the bail determination was made by a judicial officer;
- 152,684 defendants whose contact event was for a new criminal offense punishable by incarceration for which the defendant was released by a law enforcement officer on a summons;
- 20,538 defendants whose contact event was solely related to a pre-existing court obligation, such as a probation violation, failure to appear, or contempt of court;
- 12,284 defendants whose contact event was for a new criminal offense that was not punishable by incarceration;
- 5,563 defendants whose contact event was later identified as a follow-up to a contact event that occurred the previous year; and
- 4,458 defendants who could not be classified or tracked due to insufficient data.

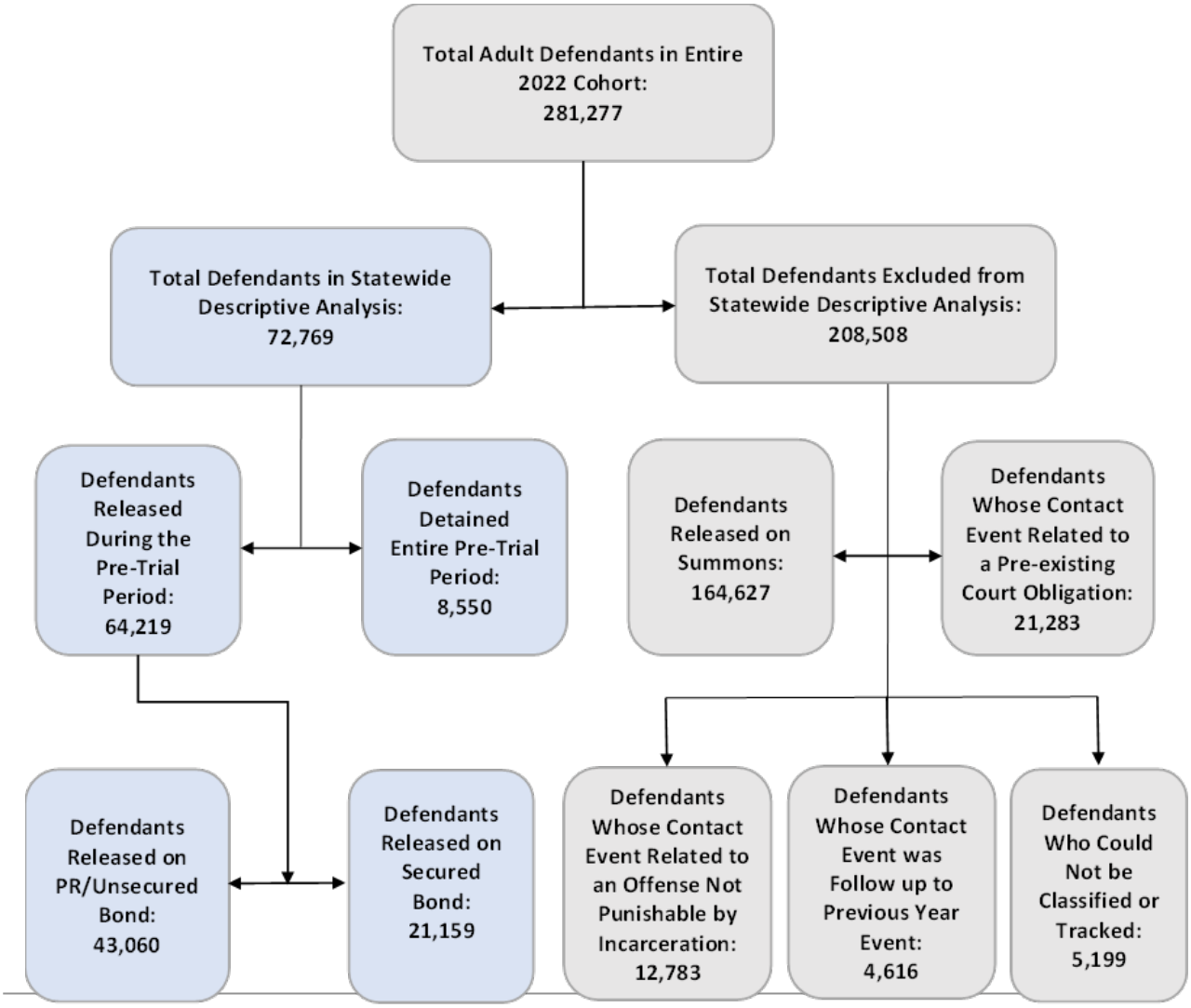
**Chart 3: Classification of Defendants in the CY2021 Cohort**



The CY2022 cohort contains 281,277 individuals (Chart 4). These defendants were categorized as follows:

- 72,769 defendants whose contact event included a new criminal offense punishable by incarceration where the bail determination was made by a judicial officer;
- 164,627 defendants whose contact event was for a new criminal offense punishable by incarceration for which the defendant was released by a law enforcement officer on a summons;
- 21,283 defendants whose contact event was solely related to a pre-existing court obligation, such as a probation violation, failure to appear, or contempt of court;
- 12,783 defendants whose contact event was for a new criminal offense that was not punishable by incarceration;
- 4,616 defendants whose contact event was later identified as a follow-up to a previous year's contact event; and,
- 5,199 defendants who could not be classified or tracked due to insufficient data.

**Chart 4: Classification of Defendants in the CY2022 Cohort**



# Scope of Report

This report has two purposes. The first is to provide an overview of the findings across multiple years of pretrial data now available. The second is to evaluate the causal effects of recent changes in bail policy, specifically the elimination of presumptive denial of bail, on pretrial decisions and outcomes in Virginia. Both analyses focus on adult defendants whose contact event included a new criminal offense punishable by incarceration where the bail determination was made by a judicial officer (magistrate or judge).

There are five categories of defendants not included in aggregate analyses discussed in this report. In general, the analyses did not include defendants who were released on a summons for a new criminal offense punishable by incarceration. These individuals were not included in the analysis because their release was typically based on law enforcement officer discretion as opposed to judicial officer discretion. The analyses also did not include defendants whose contact event related solely to a pre-existing court obligation, such as a probation violation, failure to appear, or contempt of court. These individuals were not included in the analyses because their contact event was clearly related to a previous charge. As a result, the experiences that these defendants had during the pretrial period were likely different than the experiences of the defendants who began the pretrial period as a result of a new charge. Similarly, for this year's study, a defendant's first contact event in a calendar year was excluded if it was identified as a pretrial outcome for an event that occurred during the previous calendar year. Furthermore, the analyses excluded defendants whose contact event related to a new criminal offense that was not punishable by incarceration (e.g., non-jailable misdemeanors or infractions). These defendants were not included in the analysis because this report focuses on new charges in the contact event that could result in the pretrial detention and/or post-trial incarceration of the defendant. Lastly, the analyses exclude defendants who could not be reliably classified or tracked due to missing, incomplete, or conflicting information. While these five categories of defendants were not included within the scope of this report, they did contribute to the overall pretrial caseloads in CY2021 and CY2022 and are included in the final datasets available to the public.

**Appendices.** The Sentencing Commission's previous report presented a number of tables with descriptive findings based on the previous cohorts for CY2018, CY2019, and CY2020. Appendices A and B replicate all the same tables for the CY2021 and CY2022 cohorts, respectively. This enables comparisons across years of pretrial defendants. As with the aggregate analyses discussed in the main body of this report, the tables presented in the Appendices reflect adult defendants in the CY2021 and CY2022 cohorts whose contact event included a new criminal offense punishable by incarceration where the bail determination was made by a judicial officer (magistrate or judge). In general, the tables in Appendices focus on the characteristics of pretrial defendants, the flow of defendants through the pretrial system, and outcomes. Specifically, they provide:

- Demographics of defendants;
- Comparisons between released and detained defendants;
- Comparisons between defendants released on a personal recognizance (PR) or unsecured bond and defendants released on a secured bond;
- Demographics and bond amounts at release for defendants released on a secured bond;
- Demographics and initial bond amounts for defendants who remained detained on a secured bond for the entire pretrial period;
- Court appearance and new in-state arrests for released defendants; and,
- Final dispositions for the charges in the contact event.

While statewide descriptive findings presented in this report are an excellent method for examining aspects of Virginia's pretrial process overall, variations across localities are prevalent. Appendices C and D present locality-specific descriptive findings for the CY2021 and CY2022 cohorts.

Appendix E contains the *Pretrial Data Codebook*, which defines each factor and describes how it was captured within the data system that contributed the information.

All Appendices are available on the Sentencing Commission's website at
http://www.vcsc.virginia.gov/pretrialdataproject.html

# Findings from Multi-Year Cohorts (CY2020 - CY2022)

This chapter presents descriptive findings from multiple years of pretrial data now available, focusing on contact events occurring in CY2020, CY2021 and CY2022. The analysis included only adult defendants whose contact events include a charge for a new criminal offense punishable by incarceration where bail determination was made by a judicial officer (magistrate or judge). The multi-year tables presented in this chapter provide important information regarding Virginia's pretrial process, including defendants' demographic and legal characteristics, pretrial release status, release mechanisms, bond amount, pretrial supervision status, risk scores, and pretrial/disposition outcomes. As these descriptive analyses are based on multi-year cohorts (including CY2020, when the COVID-19 pandemic began), the findings are expected to yield important insights about the changes or persistence in various aspects of pretrial case processing in Virginia during the post pandemic period.

## DEFENDANT DEMOGRAPHICS

Table 1 presents the underlying demographic characteristics of defendants in the CY2020, CY2021 and CY2022 cohorts. As the table indicates, the largest share of defendants were male, white, between the ages of 18 to 35, and categorized as indigent. In fact, the distributions of the demographic characteristics have been very similar across calendar years since the inception of the Virginia Pretrial Data Project; any percentage difference under any particular category is less than five percentage points. Of note, more than one-half the individuals in each cohort have been categorized as indigent.

For this table and similar tables throughout this report, indigency is a proxy measure based on whether the attorney type at case closure in the Court Case Management System 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.

## Table 1: Defendant Demographics, CY2020-CY2022

| | Number of Defendant (Percentage) | | |
|---|---|---|---|
| | **2020** | **2021** | **2022** |
| *Defendant Sex* | | | |
| Male | 53,185 (72.3%) | 51,127 (72.7%) | 52,986 (72.8%) |
| Female | 20,126 (27.4%) | 18,854 (26.8%) | 19,419 (26.7%) |
| Unknown | 226 (0.3%) | 330 (0.5%) | 364 (0.5%) |
| *Defendant Race* | | | |
| White[13] | 42,086 (57.2%) | 40,249 (57.2%) | 40,954 (56.3%) |
| Black | 28,483 (38.7%) | 26,979 (38.4%) | 28,486 (39.1%) |
| Asian or Pacific Islander | 771 (1.0%) | 748 (1.1%) | 867 (1.2%) |
| American Indian/Alaskan Native | 20 (0.0%) | 38 (0.1%) | 30 (0.0%) |
| Unknown | 2,177 (3.0%) | 2,297 (3.3%) | 2,432 (3.3%) |
| *Defendant Age Group* | | | |
| 18-25 years old | 16,776 (22.8%) | 14,756 (21.0%) | 15,138 (20.8%) |
| 26-35 years old | 24,566 (33.4%) | 23,328 (33.2%) | 23,750 (32.6%) |
| 36-45 years old | 16,011 (21.8%) | 16,504 (23.5%) | 17,583 (24.2%) |
| 46-55 years old | 9,725 (13.2%) | 9,196 (13.1%) | 9,347 (12.8%) |
| 56-65 years old | 5,157 (7.0%) | 5,127 (7.3%) | 5,357 (7.4%) |
| >65 years old | 1,298 (1.8%) | 1,386 (2.0%) | 1,580 (2.2%) |
| Unknown | 4 (0.0%) | 14 (0.0%) | 14 (0.0%) |
| *Defendant Indigency Status* | | | |
| Indigent | 40,904 (55.6%) | 38,462 (54.7%) | 41,183 (56.6%) |
| Not Indigent | 30,150 (41.0%) | 29,232 (41.6%) | 28,944 (39.8%) |
| Unknown | 2,483 (3.4%) | 2,617 (3.7%) | 2,642 (3.6%) |
| **Total** | **73,537 (100%)** | **70,311 (100%)** | **72,769 (100%)** |

[13] Due to the standard required when requesting criminal history records from the Virginia State Police, the White category includes both Caucasian and Hispanic groups.

## MOST SERIOUS OFFENSE CATEGORY

Table 2 presents information regarding the most serious charged offense in the CY2020, CY2021 and CY2022 cohorts. In each year, more defendants were charged with a misdemeanor as the most serious offense than a felony. The gap between the percentage of defendants with a felony versus a misdemeanor as the most serious offense was the lowest in CY2020 and has widened since then. For example, in CY2022, 45.1% of the defendants had a felony as their most serious offense, while 54.9% had a misdemeanor as the most serious offense.

Table 2 also reveals that, for 28% to 32% of the defendants charged with a felony, the most serious offense was a felony drug offense[14]. The three most common felony offenses (drug, larceny, and assault) accounted for more than half of the most serious felony charges for CY2020, 2021, and 2022.

Before CY2020, for defendants with a misdemeanor offense as the most serious charge, the most common misdemeanor was driving under the influence (DUI). Since CY2020, assault has been the most common misdemeanor charge. This is consistent with other reports that suggest an increase in domestic violence during the COVID-19 pandemic and subsequent stay-at-home orders (Mohler et al., 2020; Piquero et al., 2020; Demir and Park, 2022; Kourti et al., 2023).

**Table 2: Most Serious Offense in Contact Event, CY2020-CY2022**

| | Number of Defendant (Percentage) | | |
|---|---|---|---|
| | **2020** | **2021** | **2022** |
| *Most Serious Charge* | | | |
| Felony | 35,532 (48.3%) | 32,402 (46.1%) | 32,798 (45.1%) |
| Misdemeanor | 37,973 (51.6%) | 37,898 (53.9%) | 39,934 (54.9%) |
| Special/Undetermined | 32 (0.0%) | 11 (0.0%) | 37 (0.1%) |
| *Felonies* | | | |
| Drug | 11,488 (32.3%) | 9,506 (29.3%) | 9,298 (28.3%) |
| Larceny | 5,757 (11.6%) | 4,378 (13.5%) | 4,188 (12.8%) |
| Assault | 4,533 (12.8%) | 4,501 (13.9%) | 4,694 (14.3%) |
| Fraud | 2,069 (5.8%) | 1,666 (5.1%) | 1,801 (5.5%) |
| Weapon/Firearm | 2,094 (5.9%) | 2,527 (7.8%) | 2,597 (7.9%) |
| Other Felonies | 9,591 (31.6%) | 9,823 (30.3%) | 10,220 (31.2%) |
| *Misdemeanors* | | | |
| DUI | 12,022 (31.7%) | 12,528 (33.1%) | 12,891 (32.3%) |
| Assault | 13,562 (35.7%) | 14,100 (37.2%) | 14,344 (35.9%) |
| Larceny | 1,356 (3.1%) | 1,394 (3.7%) | 1,909 (4.8%) |
| Obstruction of Justice | 1,194 (3.1%) | 1,114 (2.9%) | 1,294 (3.2%) |
| Drug | 652 (1.0%) | 268 (0.7%) | 204 (0.5%) |
| Other Misdemeanors | 9,187 (25.4%) | 8,494 (22.4%) | 9,292 (23.3%) |
| **Total** | **73,537 (100%)** | **70,311 (100%)** | **72,769 (100%)** |

[14] The grouping of the offense category is primarily based on the prefix of the Virginia Crime Code (VCC). For instance, if a charge has a VCC starting with NAR or PHA, its offense category is drug. Similarly, if a charge's VCC code starts with ASL, its category is assault.

## PRETRIAL RELEASE STATUS OF DEFENDANTS

In Virginia, the vast majority of defendants are ultimately released from custody during the pretrial period. The Pretrial Data Project has accumulated sufficient data to examine a five-year trend in release rates. As shown in Chart 5, the overall pretrial release rate increased from 86.8% in CY2018 to 89.5% in CY2020, when the COVID pandemic began. From its peak in CY2020, the overall pretrial release rate has since declined to 88.3% in CY2022. However, the release rate remains higher than CY2018-CY2019 levels. The future data will provide much clearer insight into the longer-term trend in pretrial releases in Virginia.

**Chart 5: Pretrial Release Rate, CY2018-CY2022 Contact Events**

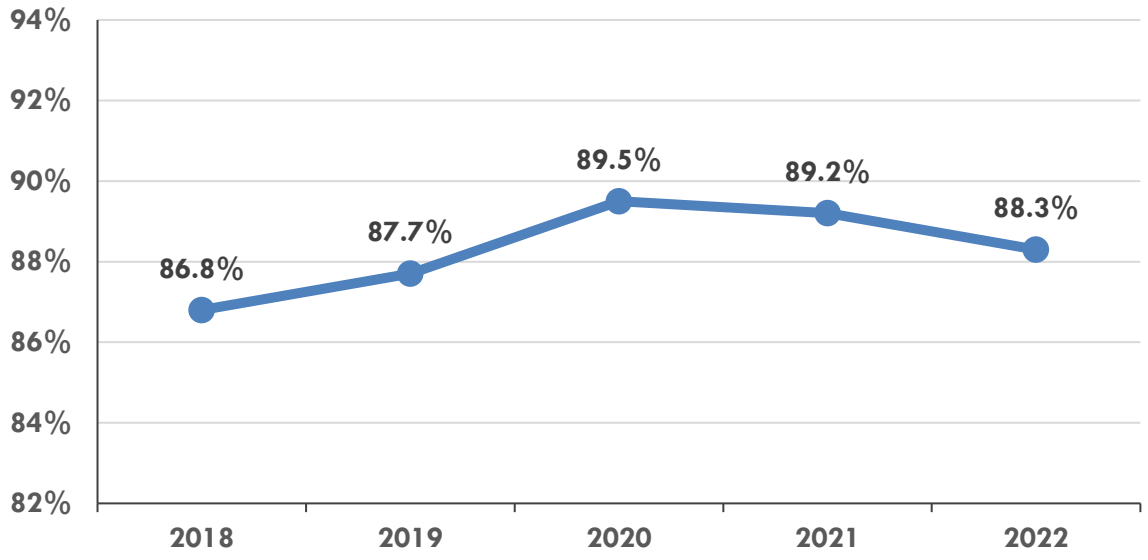



Table 3 and Chart 6 present more detailed information about the pretrial release status for defendants during the study period (CY2020-CY2022). The "Detained" category indicates that a defendant was detained throughout the entire pretrial period until the final disposition of the criminal charge(s). "Released on Secured Bond" means that a defendant was released on secured bond by paying cash, securing payment through a bail bondsman, or offering property as collateral as a guarantee to appear in court. Lastly, "Released on PR or Unsecured Bond" means that a defendant was released on personal recognizance or on an unsecured bond, which requires no financial obligation at the time of release.

As shown in Table 3 and Chart 6, throughout CY2020-CY2022, the vast majority of defendants were ultimately released from custody during the pretrial period. Approximately one in ten defendants were detained throughout the pretrial period. While overall release rates decreased slightly during the three-year period, the

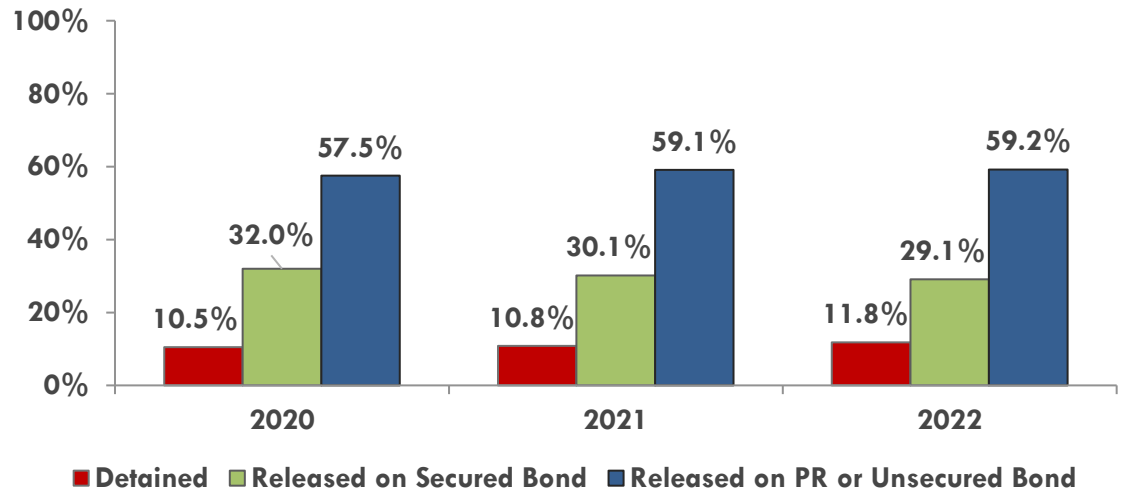
percentage of defendants released on personal recognizance or unsecured bond increased from 57.5% in CY2020 to 59.2% in CY2022. As the rate of release on personal recognizance or unsecured bond increased, the rate at which defendants were released on secured bond decreased after CY2020. The decrease in the rate of release on secured bond may be associated with the COVID-19 pandemic and/or the elimination of presumptive denial of bail in 2021.

Data reveal that, among the defendants who were ultimately released during the pretrial period, the percentage of those released within three days peaked in CY2020 at 86.0% and declined thereafter (84.2% in CY20201 and 84.4% in CY2022). The CY2021 and CY2022 rates were comparable to the CY2019 rate.

### Table 3: Pretrial Release Type in Contact Event, CY2020-CY2022

| | Number of Defendant (Percentage) | | |
|---|---|---|---|
| | **2020** | **2021** | **2022** |
| Detained | 7,729 (10.5%) | 7,602 (10.8%) | 8,550 (11.7%) |
| Released on Secured Bond | 23,496 (32.0%) | 21,149 (30.1%) | 21,159 (29.1%) |
| Released on PR or Unsecured Bond | 42,312 (57.5%) | 41,560 (59.1%) | 43,060 (59.2%) |
| **Total** | **73,537 (100%)** | **70,311 (100%)** | **72,769 (100%)** |

### Chart 6: Pretrial Release Type in Contact Event, CY2020-CY2022



## PRETRIAL RELEASE STATUS AND MOST SERIOUS OFFENSE

The pretrial release rate for individuals charged with felony offenses is lower than the overall release rate. Overall release rates have ranged from 88% to 90% in recent years. During CY2021 and CY2022, between 79% and 81% of individuals facing felony charges were released pretrial. As shown in Tables 4 and 5, release rates vary by the type of felony offense charged. Individuals with felony charges for drug, assault, burglary, kidnapping or other crimes against a person were more likely to be detained throughout the pretrial period. The highest pretrial detention rate shown in the tables is for the category labeled "All Other Felony Charges." Because they are less common, many of the violent felony offenses are grouped into this category, resulting in the highest detention rate among the offense categories.

### Table 4: Pre-Trial Release Status and Most Serious Felony Offense Category in Contact Event, 2021

| | *Pretrial Release Status* | | Number of |
|---|---|---|---|
| | Released | Detained | Defendants |
| Drug | 7,816 (82.2%) | 1,690 (17.8%) | 9,506 |
| Assault | 3,501 (77.8%) | 1,000 (22.2%) | 4,501 |
| Larceny | 3,815 (87.1%) | 563 (12.9%) | 4,378 |
| Weapon/Firearm | 2,163 (85.6%) | 364 (14.4%) | 2,527 |
| Fraud | 1,470 (88.2%) | 196 (11.8%) | 1,666 |
| Burglary | 1,057 (78.5%) | 289 (21.5%) | 1,346 |
| Traffic - Hit and Run | 870 (92.1%) | 75 (7.9%) | 945 |
| Kidnapping | 515 (72.9%) | 191 (27.1%) | 706 |
| Vandalism, Damage Property | 633 (92.4%) | 52 (7.6%) | 685 |
| Family Offense | 627 (93.9%) | 41 (6.1%) | 668 |
| All Other Felony Charges | 3,649 (66.7%) | 1,825 (33.3%) | 5,474 |
| **Total** | **26,115 (80.6%)** | **6,286 (19.4%)** | **32,402** |

### Table 5: Pre-Trial Release Status and Most Serious Felony Offense Category in Contact Event, 2022

| | *Pretrial Release Status* | | Number of |
|---|---|---|---|
| | Released | Detained | Defendants |
| Drug | 7,439 (80.0%) | 1,859 (20.0%) | 9,298 |
| Assault | 3,678 (78.4%) | 1,016 (21.6%) | 4,694 |
| Larceny | 3,574 (85.3%) | 614 (14.7%) | 4,188 |
| Weapon/Firearm | 2,225 (85.7%) | 372 (14.3%) | 2,597 |
| Fraud | 1,559 (86.6%) | 242 (13.4%) | 1,801 |
| Burglary | 1,059 (74.7%) | 359 (25.3%) | 1,418 |
| Traffic - Hit and Run | 890 (91.6%) | 82 (8.4%) | 972 |
| Family Offense | 742 (91.7%) | 67 (8.3%) | 809 |
| Kidnapping | 595 (78.0%) | 168 (22.0%) | 763 |
| Vandalism, Damage Property | 686 (91.8%) | 61 (8.2%) | 747 |
| All Other Felony Charges | 3,517 (63.8%) | 1,994 (36.2%) | 5,511 |
| **Total** | **25,964 (79.2%)** | **6,834 (20.8%)** | **32,798** |

Note: Many factors not shown in the tables affect pretrial release rates.

## PRETRIAL RELEASE STATUS AND DEFENDANT DEMOGRAPHICS

Table 6 presents the pretrial release rates disaggregated by the demographic characteristics of the defendants. Overall, in each year, most defendants were ultimately released during the pretrial period regardless of their demographic characteristics. Females, however, were more likely to be released than males and Whites were more likely to be released than Blacks. Furthermore, defendants between the ages of 18 and 25 and those older than 55 were more likely to be released than other age groups. Lastly, the table shows that non-indigent defendants were more likely to be released than indigent defendants. These differences have been largely consistent since the beginning of the Pretrial Data Project.

### Table 6: Pretrial Release Rate Among Demographic Groups, CY2020-CY2022

| | Pretrial Release Rate | | |
|---|---|---|---|
| | **2020** | **2021** | **2022** |
| *Defendant Sex* | | | |
| Male | 87.5% | 87.2% | 86.2% |
| Female | 94.8% | 94.6% | 93.9% |
| Unknown | 83.2% | 82.1% | 82.1% |
| *Defendant Race* | | | |
| White | 90.4% | 89.9% | 89.4% |
| Black | 88.1% | 88.0% | 86.6% |
| Asian or Pacific Islander | 95.8% | 96.4% | 93.9% |
| American Indian or Alaskan Native | 85.0% | 86.8% | 93.3% |
| Unknown | 88.4% | 87.6% | 86.6% |
| *Defendant Age Group* | | | |
| 18-25 years old | 90.6% | 90.4% | 90.5% |
| 26-35 years old | 88.8% | 88.3% | 87.2% |
| 36-45 years old | 88.5% | 87.8% | 86.9% |
| 46-55 years old | 89.3% | 90.1% | 87.9% |
| 56-65 years old | 91.4% | 90.7% | 89.6% |
| >65 years old | 94.6% | 94.1% | 94.1% |
| Unknown | 100.0% | 92.9% | 78.6% |
| *Defendant Indigency Status* | | | |
| Indigent | 85.6% | 84.9% | 83.3% |
| Not Indigent | 94.2% | 94.2% | 94.6% |
| Unknown | 96.9% | 95.8% | 95.6% |
| **Total** | **73,537** | **70,311** | **72,769** |

Note: Many factors not shown in the table, including the charged offense and prior record, affect pretrial release rates.

The information presented in two-dimensional tables such as the one above should be interpreted with caution, as a number of factors affect the release decision, including the charged offense and the defendant's prior record. Additional analyses were conducted to examine pretrial release rates for different demographic groups after controlling for the type and seriousness of the offense charged. Tables 6-1 through 6-8 summarize the results. This approach does not isolate the independent influence of a defendant's demographic characteristics on release rates, but it does provide a richer understanding of these relationships.

As Tables 6-1 and 6-8 suggest, if a defendant's primary offense charge is a misdemeanor, different demographic characteristics, such as gender, race, age or indigency status do not play a significant role in the pretrial release rate. If a defendant's most serious charge is a felony, the general inference drawn from Table 6 still holds true. That is, a female charged with a felony as a primary offense would be more likely to be released than a male defendant charged with a felony (Table 6-1). Table 6-2 suggests that White defendants charged with a felony as the most serious offense are slightly more likely to be released than Black defendants. According to Table 6-3, the defendants between ages of 18 and 25 and those older than 55 charged with a felony were more likely to be released than other age groups. Lastly, a larger percentage of non-indigent defendants charged with felonies were released during the pretrial period as compared to indigent defendants charged with felonies (Table 6-4).

### Table 6-1: Pretrial Release Rate by Gender and Case Type, CY2020-CY2022

| | Number of Defendants (Pretrial Release Rate) | |
|---|---|---|
| | **Felony** | **Misdemeanor** |
| Female | 25,337 (89.9%) | 33,037 (98.0%) |
| Male | 74,816 (77.4%) | 82,427 (95.7%) |
| Unknown | 578 (75.4%) | 341 (94.1%) |
| **Total** | **100,731 (80.5%)** | **115,805 (96.3%)** |

### Table 6-2: Pretrial Release Rate by Race and Case Type, CY2020-CY2022

| | Number of Defendants (Pretrial Release Rate) | |
|---|---|---|
| | **Felony** | **Misdemeanor** |
| White | 54,362 (81.5%) | 68,871 (96.6%) |
| Black | 42,451 (79.3%) | 41,477 (96.0%) |
| Asian or Pacific Islander | 737 (88.2%) | 1,648 (98.5%) |
| American Indian or Alaskan Native | 30 (70.0%) | 58 (98.3%) |
| Unknown | 3,151 (78.3%) | 3,751 (95.3%) |
| **Total** | **100,731 (80.5%)** | **115,805 (96.3%)** |

Note: Many factors not shown in the tables affect pretrial release rates.

### Table 6-3: Pretrial Release Rate by Age Group and Case Type, CY2020-CY2022

| | Number of Defendants (Pretrial Release Rate) | |
|---|---|---|
| | **Felony** | **Misdemeanor** |
| 18-25 years old | 21,318 (82.3%) | 25,339 (97.4%) |
| 26-35 years old | 34,177 (79.3%) | 37,436 (96.2%) |
| 36-45 years old | 23,896 (79.0%) | 26,184 (95.7%) |
| 46-55 years old | 13,052 (81.2%) | 15,208 (96.0%) |
| 56-65 years old | 6,719 (83.2%) | 8,912 (96.2%) |
| >65 years old | 1,562 (89.2%) | 2,701 (97.2%) |
| Unknown | 7 (100.0%) | 25 (84.0%) |
| **Total** | **100,731 (80.5%)** | **115,805 (96.3%)** |

### Table 6-4: Pretrial Release Rate by Indigency Status and Case Type, CY2020-CY2022

| | Number of Defendants (Pretrial Release Rate) | |
|---|---|---|
| | **Felony** | **Misdemeanor** |
| Indigent | 65,541 (76.9%) | 54,946 (93.8%) |
| Not Indigent | 33,952 (87.4%) | 54,364 (98.6%) |
| Unknown | 1,238 (84.2%) | 6,495 (98.5%) |
| **Total** | **100,731 (80.5%)** | **115,805 (96.3%)** |

Note: Many factors not shown in the tables affect pretrial release rates.

Tables 6-5 through 6-8 show pretrial release rates for different demographic groups based on the nature of the charged offense (i.e., whether the most serious charge is categorized as violent or not). Categorization of an offense as violent is based on a list of violent offenses provided by Virginia Department of Criminal Justice Services (DCJS). DCJS is currently using this list in conjunction with its pilot test of the Public Safety Assessment (PSA) instrument in select jurisdictions in the Commonwealth. This list of violent offenses includes both felonies and misdemeanors.

Overall, the demographic characteristics examined continue to have an important role in pretrial release rates even after taking into account the nature of the most serious offense. For example, female defendants charged with a violent offense remain more likely to be released during the pretrial period than a male defendant charged with a violent offense (Table 6-5). White defendants are more likely to be released than Black defendants when charged with a violent offense (Table 6-6). Interestingly, release rates do not significantly vary across age groups when defendants are charged with a violent offense, except that the oldest age group (those older than 65) have a slightly higher release rate (Table 6-7). Lastly, among those charged with a violent offense, non-indigent defendants remain more likely to be released than indigent defendants (Table 6-8).

### Table 6-5: Pretrial Release Rate by Gender and Violent Crime, CY2020-CY2022

| | Number of Defendants (Pretrial Release Rate) | |
|---|---|---|
| | **Nonviolent** | **Violent** |
| Female | 36,830 (93.6%) | 21,569 (95.9%) |
| Male | 100,263 (88.6%) | 57,035 (84.1%) |
| Unknown | 637 (82.4%) | 283 (82.3%) |
| **Total** | **137,730 (89.9%)** | **78,887 (87.3%)** |

### Table 6-6: Pretrial Release Rate by Race and Violent Crime, CY2020-CY2022

| | Number of Defendants (Pretrial Release Rate) | |
|---|---|---|
| | **Nonviolent** | **Violent** |
| White | 81,431 (90.5%) | 41,858 (88.7%) |
| Black | 50,187 (88.9%) | 33,761 (85.6%) |
| Asian or Pacific Islander | 1,444 (95.4%) | 942 (95.2%) |
| American Indian /Alaskan Native | 54 (90.7%) | 34 (85.3%) |
| Unknown | 4,614 (89.0%) | 2,292 (84.5%) |
| **Total** | **137,730 (89.9%)** | **78,887 (87.3%)** |

Note: Many factors not shown in the tables affect pretrial release rates.

### Table 6-7: Pretrial Release Rate by Age Group and Violent Crime, CY2020-CY2022

| | Number of Defendants (Pretrial Release Rate) | |
|---|---|---|
| | **Nonviolent** | **Violent** |
| 18-25 years old | 28,811 (92.7%) | 17,859 (86.8%) |
| 26-35 years old | 44,799 (88.8%) | 26,845 (87.0%) |
| 36-45 years old | 32,229 (88.0%) | 17,869 (87.3%) |
| 46-55 years old | 18,566 (89.8%) | 9,702 (87.8%) |
| 56-65 years old | 10,606 (91.6%) | 5,035 (88.6%) |
| >65 years old | 2,702 (95.4%) | 1,562 (92.3%) |
| Unknown | 17 (82.4%) | 15 (93.3%) |
| **Total** | **137,730 (89.9%)** | **78,887 (87.3%)** |

### Table 6-8: Pretrial Release Rate by Indigency Status and Violent Crime, CY2020-CY2022

| | Number of Defendants (Pretrial Release Rate) | |
|---|---|---|
| | **Nonviolent** | **Violent** |
| Indigent | 74,099 (85.2%) | 46,450 (83.7%) |
| Not Indigent | 61,960 (95.6%) | 26,366 (91.4%) |
| Unknown | 1,671 (91.3%) | 6,071 (97.4%) |
| **Total** | **137,730 (89.9%)** | **78,887 (87.3%)** |

Note: Many factors not shown in the tables affect pretrial release rates.

While the tables presented (Table 6-1 through 6-8) provide important insights about the complex dynamics of pretrial decisions, more sophisticated statistical analyses should be conducted (e.g., multivariate regression analysis) to validate the suggested effects of the demographic characteristics on release rates. That is, statistically estimating the independent effects of the demographic characteristics on a release rate while simultaneously controlling all other factors that may confound such relationships will enable researchers to make a generalized inference about demographic characteristics with a high level of statistical confidence.

## SECURED BOND AMOUNT AT RELEASE AND DEFENDANT DEMOGRAPHICS

Table 7 provides information about the mean and median secured bond amounts across demographic characteristics and by cohort year. As in previous years, the median secured bond amounts did not vary widely across sex, race, age, and indigency status. While there are some variations in terms of mean (average) secured bond amount, the differences are not large, except in some categories that have a smaller number of cases (e.g., the Unknown category). Data reveal that during CY2020-CY2022, around 90.4% of defendants released on a secured bond utilized the services of a bail bondsman.

**Table 7: Secured Bond Amount at Release, CY2020-CY2022**

| | Mean Bond Amount (Median) | | |
|---|---|---|---|
| | **2020** | **2021** | **2022** |
| *Defendant Sex* | | | |
| Male | $3,947 ($2,500) | $4,098 ($2,500) | $3,921 ($2,500) |
| Female | $2,829 ($2,000) | $2,916 ($2,000) | $2,790 ($2,000) |
| Unknown | $6,510 ($2,040) | $5,231 ($2,500) | $3,730 ($2,500) |
| *Defendant Race* | | | |
| White | $3,573 ($2,500) | $3,613 ($2,500) | $3,486 ($2,500) |
| Black | $3,802 ($2,500) | $3,986 ($2,500) | $3,814 ($2,500) |
| Other/Unknown | $4,354 ($2,500) | $5,307 ($2,500) | $4,489 ($2,500) |
| *Defendant Age Group* | | | |
| 18-25 years old | $3,961 ($2,500) | $3,904 ($2,500) | $3,787 ($2,500) |
| 26-35 years old | $3,708 ($2,500) | $3,773 ($2,500) | $3,688 ($2,500) |
| 36-45 years old | $3,680 ($2,500) | $3,773 ($2,500) | $3,597 ($2,500) |
| 46-55 years old | $3,398 ($2,500) | $3,715 ($2,500) | $3,548 ($2,500) |
| 56-65 years old | $3,430 ($2,000) | $4,184 ($2,000) | $3,624 ($2,000) |
| >65 years old | $3,936 ($2,000) | $4,939 ($2,000) | $4,120 ($2,000) |
| Unknown | - (-) | $7,600 ($2,500) | $2,500 ($2,500) |
| *Defendant Indigency Status* | | | |
| Indigent | $3,193 ($2,000) | $3,234 ($2,000) | $3,205 ($2,500) |
| Not Indigent | $4,435 ($2,500) | $4,727 ($2,500) | $4,365 ($2,500) |
| Unknown | $3,012 ($2,000) | $2,496 ($2,000) | $3,096 ($2,000) |
| **Total** | **$3,694 ($2,500)** | **$3,835 ($2,500)** | **$3,665 ($2,500)** |

Note: Many factors not shown in the table, including charged offense and prior record, affect bond amounts.

## RELEASED DEFENDANTS AND SUPERVISION STATUS

Tables 8 and 9 provide information regarding pretrial supervision rates for each year during the study period. It is interesting to note that the percentage of defendants who receive pretrial supervision has gradually increased since CY2018, when 15.6% of defendants received supervision during the pretrial period. Of released defendants, 16.1% received supervision in CY2020 (Table 8). By CY2022, this rate had reached 17.7%.

Consistent with the Sentencing Commission's previous reports, a larger percentage of defendants placed under pretrial supervision requirements received a secured bond than those released who were not placed under pretrial supervision (Table 9). Of those who received pretrial supervision, however, the proportion released on secured bond has decreased, while the percent released on PR or unsecured bond has increased.

### Table 8: Released Defendants by Pretrial Services Agency Supervision Status, CY2020-CY2022

| | Number of Defendants (Percentage) | | |
|---|---|---|---|
| | **2020** | **2021** | **2022** |
| Received Pretrial Supervision | 10,620 (16.1%) | 10,527 (16.8%) | 11,366 (17.7%) |
| Did Not Receive Pretrial Supervision | 55,188 (83.9%) | 52,182 (83.2%) | 52,853 (82.3%) |
| **Total Released** | **65,808 (100%)** | **62,709 (100%)** | **64,219 (100%)** |

### Table 9: Released Defendants by Pretrial Services Agency Supervision Status and Bond Type, CY2020-CY2022

| | **2020** | | **2021** | | **2022** | |
|---|---|---|---|---|---|---|
| | **PR/Unsecured Bond** | **Secured Bond** | **PR/Unsecured Bond** | **Secured Bond** | **PR/Unsecured Bond** | **Secured Bond** |
| Received Pretrial Supervision | 49.3% | 50.7% | 52.6% | 47.4% | 53.2% | 46.8% |
| Did Not Receive Pretrial Supervision | 67.2% | 32.8% | 69.0% | 31.0% | 70.0% | 30.0% |
| **Total Released** | **42,312** | **23,496** | **41,560** | **21,149** | **43,060** | **21,159** |

## PUBLIC SAFETY ASSESSMENT (PSA) SCORES ASSIGNED TO DEFENDANTS

For studies such as this, it is important to consider what factors or combination of factors may be associated with a defendant's success or failure while on pretrial release. Empirically-based risk assessment tools are commonly used in the criminal justice system to assist in making decisions related to individual defendants.[15] For the purposes of the Project, the Public Safety Assessment (PSA) was selected to estimate risk across all defendants in a uniform manner. For additional information about the PSA, refer to the *Overview of Methodology* section of this report.[16]

Using available automated data, the Sentencing Commission retroactively applied the PSA and computed a score for each defendant on each of the three PSA scales: the likelihood of Failure to Appear (FTA), the likelihood of New Criminal Arrest (NCA), and the likelihood of New Violent Criminal Arrest (NVCA).[17] Higher scores on the PSA indicate a higher likelihood of failing to appear or having a new criminal arrest during the pretrial period.

Tables 10 and 11 present the computed PSA scores for Failure to Appear (FTA) and New Criminal Arrest (NCA) calculated for defendants in each of the cohorts. Consistent with the data provided in previous years, the largest share of defendants was classified with a Score of 1 (lowest) or 2 for both FTA and NCA. Less than 1% of the defendants were classified in Level 6 (the highest score) for FTA, and less than 3.3% were classified in Level 6 (the highest score) for NCA.

Data reveal that the distributions of calculated PSA scores for both FTA and NCA are fairly consistent from year to year during this study period. This suggests that defendants in the CY2020, CY2021 and the CY2022 cohorts are similar in terms of the likelihood of failing to appear in court or incurring a new criminal arrest during the pretrial period.

[15] *See, e.g.,* Hamilton, M. (2020). *Risk assessment tools in the criminal justice system – theory and practice: A resource guide.* Washington, DC: National Association of Criminal Defense Lawyers. Available at https://www.nacdl.org/getattachment/a92d7c30-32d4-4b49-9c57-6c14ed0b9894/riskassessmentreportnovember182020.pdf.

[16] *See also* Advancing Pretrial Policy & Research (APPR). *About the Public Safety Assessment* at https://advancingpretrial.org/psa/factors/

[17] The Sentencing Commission followed the protocols for computing PSA scores established during the original study directed by the Crime Commission. See *Overview of Methodology* section of this report for more information.

### Table 10: Assigned Public Safety Assessment (PSA) Scores for Failure to Appear (FTA), CY2020-CY2022

| | Number of Defendants (Percentage) | | |
|---|---|---|---|
| | **2020** | **2021** | **2022** |
| PSA FTA Score 1 | 30,863 (42.0%) | 31,246 (44.4%) | 33,152 (45.6%) |
| PSA FTA Score 2 | 22,953 (31.2%) | 21,410 (30.5%) | 21,487 (29.5%) |
| PSA FTA Score 3 | 10,422 (14.2%) | 9,541 (13.6%) | 9,993 (13.7%) |
| PSA FTA Score 4 | 6,743 (9.2%) | 5,947 (8.5%) | 6,103 (8.4%) |
| PSA FTA Score 5 | 2,128 (2.9%) | 1,771 (2.5%) | 1,638 (2.3%) |
| PSA FTA Score 6 | 428 (0.6%) | 396 (0.6%) | 396 (0.5%) |
| **Total** | **73,537 (100%)** | **70,311 (100%)** | **72,769 (100%)** |

FTA= Failure to appear; NCA= New Criminal Arrest; NVCA= New Violent Criminal Arrest

### Table 11: Assigned Public Safety Assessment (PSA) Scores for New Criminal Arrest (NCA), CY2020-CY2022

| | Number of Defendants (Percentage) | | |
|---|---|---|---|
| | **2020** | **2021** | **2022** |
| PSA NCA Score 1 | 24,042 (32.7%) | 25,012 (35.6%) | 26,348 (36.2%) |
| PSA NCA Score 2 | 21,006 (28.6%) | 19,491 (27.7%) | 20,138 (27.7%) |
| PSA NCA Score 3 | 11,981 (16.3%) | 11,276 (16.0%) | 11,122 (15.3%) |
| PSA NCA Score 4 | 9,290 (12.6%) | 8,037 (11.4%) | 8,169 (11.2%) |
| PSA NCA Score 5 | 4,781 (6.5%) | 4,453 (6.3%) | 4,830 (6.6%) |
| PSA NCA Score 6 | 2,437 (3.3%) | 2,042 (2.9%) | 2,162 (3.0%) |
| **Total** | **73,537 (100%)** | **70,311 (100%)** | **72,769 (100%)** |

FTA= Failure to appear; NCA= New Criminal Arrest; NVCA= New Violent Criminal Arrest

Table 12 represents the relationship between defendants' assigned FTA and NCA scores for the entire study period (CY2020-2022). Here, low, medium, and high PSA groups were created by combining individual scores together (1-2 for low, 3-4 for medium, and 5-6 for high). Overall, 73% of defendants fall into the same score group for both FTA and NCA. For example, 59.2% of defendants are in the low scoring group for FTA and the low scoring group for NCA. A relatively small percentage of defendants were identified as scoring low on one scale but high on the other scale.

### Table 12: Public Safety Assessment (PSA) Score Range for Failure to Appear (FTA) and New Criminal Arrest (NCA)

| | Number of Defendants (Percentage) | | | |
|---|---|---|---|---|
| | **Low PSA NCA Score** | **Mid PSA NCA Score** | **High PSA NCA Score** | **Total** |
| Low PSA FTA Score | 128,131 (59.2%) | 32,706 (15.1%) | 274 (0.1%) | 161,111 (74.4%) |
| Mid PSA FTA Score | 7,899 (3.6%) | 24,956 (11.5%) | 15,894 (7.3%) | 48,749 (22.5%) |
| High PSA FTA Score | 7 (0.0%) | 2,213 (1.0%) | 4,537 (2.1%) | 6,757 (3.1%) |
| **Total** | **136,037 (62.8%)** | **59,875 (27.6%)** | **20,705 (9.6%)** | **216,617 (100.0%)** |

FTA= Failure to appear; NCA= New Criminal Arrest; NVCA= New Violent Criminal Arrest

## PRETRIAL RELEASE STATUS AND PUBLIC SAFETY ASSESSMENT (PSA) SCORES

Tables 13 and 14 show the pretrial release status (release rate) of defendants along with the assigned PSA scores for FTA and NCA for each year of study. As both tables show, the proportion of defendants who were released during the pretrial period consistently decreased as the PSA scores increased.

Release rates were highest in CY2020, when the COVID pandemic began. After CY2020, release rates gradually decreased across all PSA scores. As can be seen from the tables below, the decrease in release rates was generally larger for defendants with higher PSA scores.

### Table 13: Pretrial Release Rate by Assigned Public Safety Assessment (PSA) Failure to Appear (FTA) Score

| | Pretrial Release Rate | | |
|---|---|---|---|
| | **2020** | **2021** | **2022** |
| PSA FTA Score 1 | 94.1% | 94.1% | 93.7% |
| PSA FTA Score 2 | 89.7% | 89.5% | 88.3% |
| PSA FTA Score 3 | 85.8% | 83.8% | 81.7% |
| PSA FTA Score 4 | 80.0% | 77.5% | 76.8% |
| PSA FTA Score 5 | 71.5% | 70.3% | 65.9% |
| PSA FTA Score 6 | 69.6% | 65.8% | 60.1% |
| **Total** | **73,537** | **70,311** | **72,769** |

### Table 14: Pretrial Release Rate by Assigned Public Safety Assessment (PSA) New Criminal Arrest (NCA) Score

| | Pretrial Release Rate | | |
|---|---|---|---|
| | **2020** | **2021** | **2022** |
| PSA NCA Score 1 | 94.3% | 94.2% | 93.7% |
| PSA NCA Score 2 | 94.6% | 94.3% | 93.7% |
| PSA NCA Score 3 | 88.1% | 87.1% | 85.4% |
| PSA NCA Score 4 | 78.5% | 77.2% | 75.9% |
| PSA NCA Score 5 | 77.3% | 75.4% | 74.2% |
| PSA NCA Score 6 | 70.7% | 67.5% | 63.6% |
| **Total** | **73,537** | **70,311** | **72,769** |

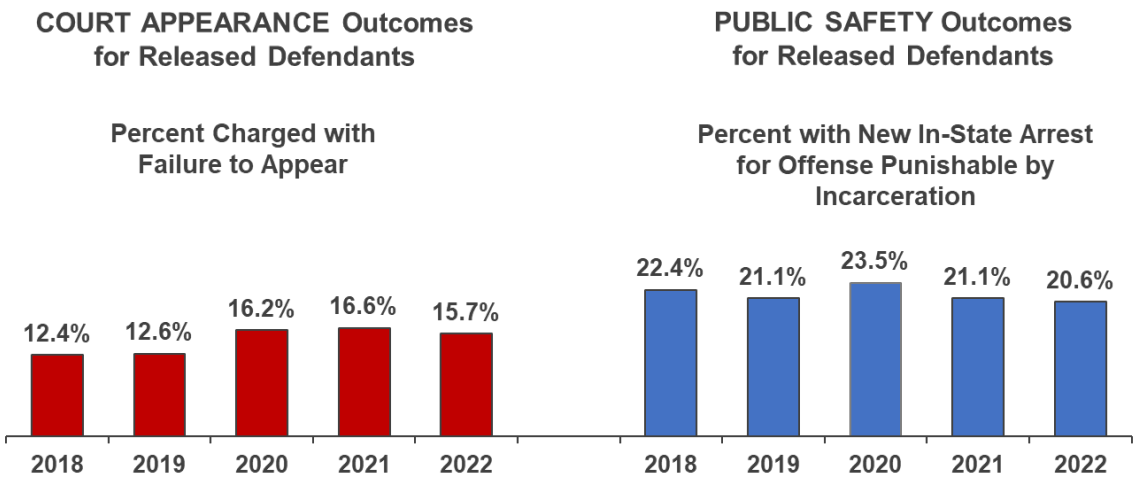
## STATEWIDE PRETRIAL OUTCOMES

Two primary measures of pretrial outcomes are calculated for the Pretrial Data Project. The first outcome measure captures whether or not the defendant appeared at all court proceedings for the charges associated with the contact event. For this measure, the Sentencing Commission examined the data to determine if the defendant was charged with failure to appear, or contempt of court for failing to appear, during the pretrial period.[18] The second outcome measure for the Project captures whether or not the defendant had a new in-state arrest for an offense punishable by incarceration during the pretrial period. The Sentencing Commission took steps to ensure, to the extent possible, that the new arrests were associated with alleged offenses committed during the pretrial period (i.e., the arrest was not associated with an offense committed prior to the current pretrial period). As noted previously, Project data is still limited to Virginia (in-state) criminal history records due to FBI restrictions on the dissemination of federal and out-of-state records for non-criminal justice (non-investigative) purposes. After lengthy delays, the FBI has finally approved the Commission's request for out-of-state criminal history records. The Commission is currently working with the FBI to standardize data exchange procedures. As this process is not yet complete, out-of-state records could not be included in the Project this year. The Commission expects that out-of-state criminal history records will be incorporated into pretrial data in 2025 (see *Overview of Methodology* section of this report for additional information). Consistent with the methodology used in previous years, individuals were tracked through disposition of the case or the end of the 15-month follow-up period, whichever came first. This section focuses only on outcomes for the defendants in the cohorts who were ultimately released during the pretrial period.

Chart 7 illustrates, for each year, the overall failure to appear rate and the new criminal arrest rate from CY2018 through CY2022. As the chart indicates, the failure to appear rate jumped to 16.2% in CY2020 and continued to rise to 16.6% in CY2021. After that, the failure to appear rate dropped slightly to 15.7% in CY2022. While the rate for failure to appear fell in CY2022, it remains higher than pre-COVID rates (CY2018 and CY2019). The new criminal arrest rate peaked in CY2020 at 23.5% and decreased to 20.6% by CY2022. Unlike the failure to appear rate, the CY2022 new criminal arrest rate is the lowest of the five-year period analyzed.

[18] Charges of failure to appear include violations of §§ 19.2-128, 18.2-456, 16.1-69.24, 29.1-210, 46.2-936, 46.2-938, or 19.2-152.4:1. Charges under §§ 16.1-69.24 and 46.2-938, as well as general contempt of court charges under § 18.2-456, were only included if the charge description indicated that offense charge was based on a failure to appear.

## Chart 7: Statewide Pretrial Outcomes, CY2018-CY2022




This analysis is based on the defendants who were charged with a criminal offense punishable by incarceration and, following a bail determination made by a judicial officer, were released during the pretrial period.

The higher failure to appear rates among the CY2020 and CY2021 cohorts are consistent with general expectations of pretrial outcomes during the pandemic. Due to the public health emergency, court systems in Virginia, like other states, quickly altered the hearing/court schedules to contain or decrease the spread of the virus, which led to delayed case processing and case backlogs (Viglione et al., 2023). This may have led to more confusion among the released defendants regarding upcoming hearing dates. Also, the delays extended the pretrial period, lengthening the period of time during which released individuals might reoffend. This may have resulted in higher failure to appear rates in CY2020 and CY2021, as well as a higher new criminal arrest rate in the CY2020 cohort.

For defendants who incurred new criminal arrests during the pretrial period, most of the new arrests were for misdemeanor offenses. Beginning in CY2018, between one-fourth and one-third of new criminal arrests during the pretrial period were for felony offenses. Between CY2020 and CY2022, the percentage of new arrests that were felonies has remained roughly 32% each year.

As additional years of pretrial data are accumulated, researchers will have a better understanding of these trends and the dynamics of the pretrial system.

Tables 15 and 16 and Charts 8 and 9 present failure to appear rates and new criminal arrest rates broken down by pretrial release mechanism (i.e., personal recognizance (PR) or unsecured bond versus secured bond). In general, the percentages of defendants who failed to appear or who incurred a new criminal arrest are consistently higher for those released on secured bond. This is in line with general expectations, as defendants released on secured bond scored higher, on average, on the PSA risk assessment tool than defendants released through other mechanisms.

### Table 15: Statewide Court Appearance Outcomes for Released Defendants by Pretrial Release Type, CY2020-CY2022

| | Failure to Appear Rate | | |
|---|---|---|---|
| | **2020** | **2021** | **2022** |
| Released on PR or Unsecured Bond | 15.5% | 15.7% | 15.3% |
| Released on Secured Bond | 17.4% | 18.2% | 16.4% |
| **Total Released** | **65,808** | **62,709** | **64,219** |

(PR=Personal Recognizance)

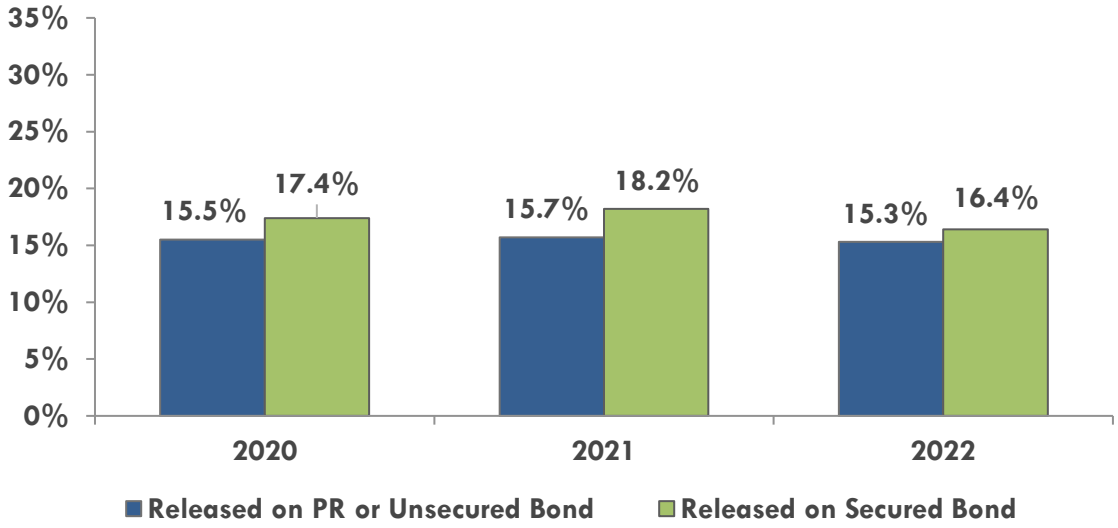
### Table 16: Statewide New Arrest Outcomes for Released Defendants by Pretrial Release Type, CY2020-CY2022

| | New Criminal Arrest Rate | | |
|---|---|---|---|
| | **2020** | **2021** | **2022** |
| Released on PR or Unsecured Bond | 21.1% | 18.9% | 18.9% |
| Released on Secured Bond | 27.8% | 25.5% | 24.2% |
| **Total Released** | **65,808** | **62,709** | **64,219** |

(PR=Personal Recognizance)

## Chart 8: Statewide Court Appearance Outcomes for Released Defendants by Pretrial Release Type, CY2020-CY2022

*Percentage of Defendants Charged with Failure to Appear by Pretrial Release Type*




## Chart 9: Statewide New Arrest Outcomes for Released Defendants by Pretrial Release Type, CY2020-CY2022

*Percentage of Defendants Arrested for New In-State Offense Punishable by Incarceration by Pretrial Release Type*

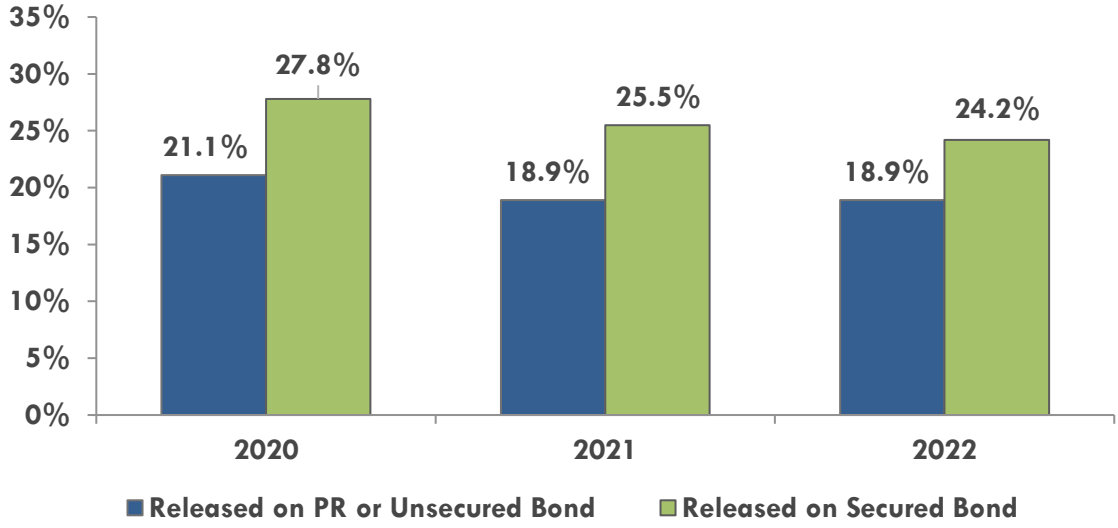


Table 17 shows the computed PSA FTA scores and the court appearance outcomes for defendants who were ultimately released during the pretrial period. Table 18 presents the computed PSA NCA scores and the new arrest outcomes for released individuals.

Overall, most defendants were not charged with failure to appear during the pretrial period, regardless of the PSA FTA score. However, the proportion of defendants charged with failing to appear increased as the FTA scores increased. Similarly, most defendants were not arrested for a new in-state offense punishable by incarceration during the pretrial period, regardless of the PSA NCA score. The proportion of defendants arrested for a new in-state offense increased as the NCA scores increased.

Analysis revealed an interesting pattern in failure to appear rates. For defendants with PSA FTA Scores 1 through 4, failure to appear rates increased from CY2020 to CY2021 and then decreased in CY2022. In contrast, for defendants with PSA FTA scores of 5 and 6, the failure to appear rate continued to increase in CY2022, reaching its highest level since the Project began in CY2018.

### Table 17: Statewide Court Appearance Outcomes for Released Defendants by Public Safety Assessment (PSA) Score for Failure to Appear (FTA)

| | Failure to Appear Rate | | |
|---|---|---|---|
| | **2020** | **2021** | **2022** |
| PSA FTA Score 1 | 12.3% | 12.4% | 11.8% |
| PSA FTA Score 2 | 15.4% | 16.2% | 15.0% |
| PSA FTA Score 3 | 20.4% | 22.1% | 21.3% |
| PSA FTA Score 4 | 26.2% | 28.2% | 27.5% |
| PSA FTA Score 5 | 36.6% | 35.0% | 38.1% |
| PSA FTA Score 6 | 41.9% | 43.9% | 47.1% |
| **Total Released** | **65,808** | **62,709** | **64,219** |

### Table 18: Statewide New Arrest Outcomes for Released Defendants by Public Safety Assessment (PSA) Score for New Criminal Arrest (NCA)

| | New Criminal Arrest Rate | | |
|---|---|---|---|
| | **2020** | **2021** | **2022** |
| PSA NCA Score 1 | 13.8% | 13.0% | 12.8% |
| PSA NCA Score 2 | 21.9% | 20.2% | 20.0% |
| PSA NCA Score 3 | 28.8% | 26.4% | 25.5% |
| PSA NCA Score 4 | 37.1% | 33.5% | 32.4% |
| PSA NCA Score 5 | 38.9% | 36.0% | 36.4% |
| PSA NCA Score 6 | 45.1% | 41.8% | 41.2% |
| **Total Released** | **65,808** | **62,709** | **64,219** |

## FINAL DISPOSITION OF CONTACT EVENTS

Table 19 indicates the final disposition of the CY2020, CY2021 and CY2022 contact events. The defendants included in the analysis were tracked for 15 months or until final disposition of the case, whichever occurred first. This approach has been utilized since the origination of the pretrial data collection project in 2018. For the CY2021 cohort, the follow-up period ended in March 2023. For the CY2022 cohort, the follow-up period ended in March 2024. In the table below, "Convicted" indicates that the defendant was found guilty of at least one charge in the contact event. "Dismissed," "Nolle prosequi," and "Not guilty" indicate that the defendant was not convicted of any charges in the contact event[19]. "Other"[20] category indicates that a defendant had a final disposition other than what was classified as convicted, dismissed, nolle prosequi, not guilty, or pending. "Pending" means that none of the charges in the contact had reached a final disposition by the end of the follow-up period[21].

As Table 19 shows, the conviction rate for the CY2020 cohort was 52.2%. This conviction rate was considerably lower than the rates found in CY2018 and CY2019 (60.1% and 56.9%, respectively). Conviction rates have remained between 52% and 53% since CY2020. The percentage of charges that were nolle prosequi (i.e., prosecution did not go forward) was higher for the CY2020 cohort than prior cohorts (CY2018 and CY2019); however, the nolle prosequi rate has hovered between 22% and 23% since CY2020. This suggests that the COVID pandemic may have had an extended impact on criminal justice processes in Virginia. Finally, the percentage of cases that were still pending at the end of the follow-up period has declined since its peak in CY2020.

[19] If multiple charges in the contact event were heard on the same day and resulted in varying final dispositions of dismissed, nolle prosequi, or not guilty, then the following hierarchy rule applies for classification of the final disposition of the contact event: not guilty, dismissed, nolle prosequi, other. If multiple charges in the contact event were heard on different days and resulted in varying final dispositions of dismissed, nolle prosequi, or not guilty, then the contact event was classified using the most recent final disposition. Codes of mistrial (M), RES (resolved), withdrawn (W), and complied with law (CL) were classified as "dismissed." The code of not guilty by reason of insanity (NGRI) was classified as "not guilty."

[20] Examples of 'other' codes included bond forfeited (BF), certified misdemeanor (CM), extradition ordered (EO), extradition waived (EW), certified to grand jury (GJ), granted (GR), adjudicated habitual offender (HO), or defendant cannot be found (NF).

[21] The "pending" classification includes contact events that had not reached a final disposition at the end of follow-up period for each cohort, such as charges that had not been brought to trial and charges that were under a deferred disposition status. OES Court Case Management System codes of fugitive file (FF) and remanded (REM) were classified as "pending."

### Table 19: Final Disposition of Contact Events, CY2020-CY2022

| | Number of Defendants (Percentage) | | |
|---|---|---|---|
| | **2020** | **2021** | **2022** |
| Convicted | 38,403 (52.2%) | 36,812 (52.4%) | 38,228 (52.5%) |
| Dismissed | 7,846 (10.7%) | 8,302 (11.8%) | 8,990 (12.4%) |
| Nolle prosequi | 16,482 (22.4%) | 15,623 (22.2%) | 16,228 (22.3%) |
| Not guilty | 1,629 (2.2%) | 1,637 (2.3%) | 1,674 (2.3%) |
| Other | 13 (0.0%) | 13 (0.0%) | 28 (0.0%) |
| Pending | 9,164 (12.5%) | 7,924 (11.3%) | 7,621 (10.5%) |
| **Total** | **73,537 (100%)** | **70,311 (100%)** | **72,769 (100%)** |

This chapter presents some of the interesting descriptive findings from the Sentencing's Commission's analysis of the multi-year pretrial datasets now available. While several findings are relatively consistent from year to year, other measures, such as release rates and pretrial outcome measures (failure to appear and new criminal arrest), have begun to exhibit distinct patterns. As noted previously, the tables in this chapter should be interpreted with caution. In order to determine whether the differences are statistically significant, it is necessary to conduct more sophisticated statistical analyses. Future research conducted by the Sentencing Commission will address such limitations by incorporating more advanced statistical techniques.

## References

Demir, M., & Park, S. (2022). The effect of COVID-19 on domestic violence and assaults. Criminal justice review, 47(4), 445-463.

Kourti, A., Stavridou, A., Panagouli, E., Psaltopoulou, T., Spiliopoulou, C., Tsolia, M., ... & Tsitsika, A. (2023). Domestic violence during the COVID-19 pandemic: a systematic review. Trauma, violence, & abuse, 24(2), 719-745.

Mohler, G., Bertozzi, A. L., Carter, J., Short, M. B., Sledge, D., Tita, G. E., Uchida, C. D., & Brantingham, P. J. (2020). Impact of social distancing during COVID-19 pandemic on crime in Los Angeles and Indianapolis. *Journal of Criminal Justice*, *68*, 101692. https://doi.org/10.1016/j.jcrimjus.2020.101692

Piquero, A. R., Riddell, J. R., Bishopp, S. A., Narvey, C., Reid, J. A., & Piquero, N. L. (2020). Staying Home, Staying Safe? A Short-Term Analysis of COVID-19 on Dallas Domestic Violence. *American Journal of Criminal Justice: AJCJ*, 1–35. https://doi.org/10.1007/s12103-020-09531-7

Viglione, J., Peck, J. H., & Frazier, J. D. (2023). COVID-19 and Courts: An Exploration of the Impacts of the Pandemic on Case Processing and Operations. *Victims & Offenders*, *18*(5), 818–841. https://doi.org/10.1080/15564886.2022.2133034

# Evaluating the Effects of Changes in Bail Policy in Virginia

In 2021, the General Assembly passed legislation to eliminate provisions in the *Code of Virginia* that mandated a presumption against bail for defendants charged with certain offenses or who otherwise met specified criteria (Senate Bill 1266, 2021 General Assembly, Special Session I). Prior to this statutory change, § 19.2-120 required judicial officers (magistrates and judges) to presume, subject to rebuttal, that no condition or combination of conditions would reasonably assure the appearance of the person in court or the safety of the public if the person was charged with a listed offense or an offense with prior convictions for specified offenses. This year, the Sentencing Commission conducted both descriptive and causal analyses to examine the ways in which this change in bail policy may have impacted pretrial decisions and outcomes.

Proponents of presumptive denial of bail advise that the policy is important for public safety because it increases the likelihood that potentially dangerous individuals will remain in jail while awaiting trial. Opponents of this policy argue that it greatly undermines the bargaining power of a defendant by shifting the burden of proof to a defendant, who needs to make a strong argument for bail release, and that pretrial detention of low-risk defendants creates potentially adverse consequences, such as loss of a job. Opponents also argue that presumptive denial of bail, largely based on the current charge, is not likely to be a good proxy for the overall pretrial risk posed by a defendant. A body of empirical research has emerged suggesting that the combination of a judicial officer's judgement together with information from a validated risk assessment tool provides a more accurate picture of a defendant's overall risk.

With the creation of Virginia's Pretrial Data Project in 2018, comprehensive statewide data is now available to examine the impact of significant policy changes on the pretrial system. Using data for defendants with pretrial contact events in CY2020 through CY2022, the Sentencing Commission analyzed the impact of eliminating the presumption against bail in Virginia, specifically the impact on detention/release rates, use of secured bond, and pretrial outcomes such as failure to appear and new criminal arrest during the pretrial period. The findings of the Commission's study will add to the growing body of research focusing on changes in pretrial policies.

This chapter provides a summary of recent empirical studies on changes in bail policy and an overview of Virginia's presumptive denial of bail provision. The chapter includes some descriptive findings from the Commission's recent study. After discussing the research design and methodology, the chapter presents the results of the statistical analysis. The chapter ends with a discussion of the study's limitations, as well as recommendations for future research.

## LITERATURE REVIEW

Change in bail policies, sometimes referred to as bail reform, has become a popular research topic in the field of criminal justice. Many of these studies have focused on bail reform occurring in the state of New York and the casual effect of such bail reform on public safety outcomes. In general, the findings from these studies suggest that bail reform does not have a statistically strong effect on crime rates. For example, Wu and McDowall (2024) conducted a causal analysis on recent changes in bail policy in New York state (effective January 1, 2020) that limited the use of monetary conditions of release and narrowed pretrial detention to only those offenses that were deemed violent. In general, these researchers found that the effect of bail reform on crime increases was not statistically and substantially significant even though murder, larceny, and motor vehicle theft rates increased slightly after the reform. Similarly, Zhou et al. (2024) conducted causal analyses with additional robustness checks on the impacts of bail reform in New York. In general, researchers found that bail reform did not have a significant effect on crime rates overall after the reform; however, these researchers found that the reform had a statistically significant effect related to the increase in robbery offenses post-reform. Ropac (2024) focused on the impacts in New York's suburban and upstate regions. Ropac found that overall crime rates and felony rearrest rates in general did not statistically differ after the reform; however, he found that New York's bail reform did increase the violent felony rearrest rate and the rate of firearm-related offenses within a two-year span. Craigie and Grawert (2024) performed cross-sectional analyses based on monthly crime data of 33 major cities in the U.S. from 2015 to 2021 in order to evaluate bail reform's effect on public safety outcomes. Based on the results from descriptive statistics, causal analyses, and additional statistical checks, they concluded that there is no statistically strong evidence that bail reforms caused changes in crime trends.

While recent studies about bail reform provide insights about the effect of bail reform on public safety outcomes, there are shortcomings. The one notable limitation of these studies is that most utilized macro (or aggregate) level data in their evaluations. Because of this, these studies are not able to delve into individual-level differences that are simultaneously influencing the outcomes of interest. In other words, macro-level analysis does not capture all individual-level variables that may also explain public safety outcomes outside of bail reform itself. Furthermore, due to the unavailability of the data, the studies were not able to closely follow pretrial outcomes of each individual case. That is, the data are insufficient to trace each defendant to determine if he failed to appear in court or if he was rearrested for the commission of a new crime. Without this, the research findings may reflect the collective effects of many factors rather than outcomes of bail reform specifically. Virginia's Pretrial Data Project contains individual-level data and research using these data does not have this shortcoming; furthermore, it enables a researcher to conduct more in-depth analyses of changes in bail policy in Virginia.

## PRESUMPTIVE DENIAL OF BAIL IN VIRGINIA

A provision requiring presumptive denial of bail for certain individuals was first established in Virginia in 1996 (§ 19.2-120 *Code of Virginia*). The General Assembly has expanded the provision a number of times since 1996. The statute required judicial officers to presume, subject to rebuttal, that no condition or combination of conditions would reasonably assure the appearance of a defendant charged with certain offenses or who otherwise met specified criteria (due to the defendant's prior record, for example). Significant changes to § 19.2-120 since its enactment are shown in Table 20.

### Table 20: History of Presumptive Denial of Bail in Virginia

| Fiscal Year in Effect | Criteria Added/Revised |
|---|---|
| 1996 | Persons charged with a Schedule I or II drug offense under certain statutes, a "drug kingpin" offense (as defined in §18.2-248), or an act of violence (as defined in § 19.2-297.1) who have a prior conviction for such an offense within the previous 16 years |
| 1997 | Persons charged with a felony sexual assault listed in § 18.2-67.5:2(B) who have a prior conviction for such an offense within the previous 16 years |
| 1999 | Persons charged with any offense listed below:<br>1. Act of violence as defined in § 19.2-297.1;<br>2. Offense with a maximum sentence of life imprisonment or death;<br>3. Violation of §§ 18.2-248, 18.2-248.01, 18.2-255 or § 18.2-255.2 involving a Schedule I or II drug if (i) the maximum term of imprisonment is ten years or more and the person was previously convicted of a like offense or (ii) the person was previously convicted as a "drug kingpin" (as defined in § 18.2-248);<br>4. Violation of §§ 18.2-308.1, 18.2-308.2, or § 18.2-308.4 and which relates to a firearm and provides for a minimum, mandatory sentence;<br>5. Any felony, if the person has been convicted of two or more offenses described in subdivision 1 or 2;<br>6. Any felony committed while the person is on release pending trial for a prior felony or on release pending imposition or execution of sentence or appeal of sentence or conviction; or<br>7. An offense listed in subsection B of § 18.2-67.5:2 (felony sex offense) and the person had previously been convicted of such an offense and the judicial officer finds probable cause to believe that the person committed the offense charged. |

| Fiscal Year in Effect | Criteria Added/Revised |
|---|---|
| 2002 | Violation of §18.2-46.5 or § 18.2-46.7 (act of terrorism) |
| 2004 | Gang violence under §§ 18.2-46.2 or 18.2-46.3<br>DUI violation of §§ 18.2-36.1, 18.2-51.4, 18.2-266, or 46.2-341.24, and the person has, within the past five years of the instant offense, been convicted three times on different dates of a violation of any combination of these offenses |
| 2006 | Aggravated sexual battery under § 18.2-67.3 or conspiracy to commit an offense under that section |
| 2007 | Violation of § 18.2-374.1 (production, publication, etc. of child pornography) or 18.2-374.3 (use of communication system to facilitate certain offenses involving children) where the offender has reason to believe that the solicited person is under 15 years of age and the offender is at least five years older than the solicited person<br>2nd or subsequent violation of § 16.1-253.2 (violation of protective order) |
| 2008 | 3rd or subsequent assault and battery against a family member (§ 18.2-57.2(B)) |
| 2011 | 2nd or subsequent violation of § 18.2-60.4 (violation of protective order)<br>Violation of subsection C of § 18.2-460 (obstruct justice/resist arrest) charging the use of threats of bodily harm or force to knowingly attempt to intimidate or impede a witness |
| 2015 | Violation of § 18.2-51.6 (strangulation) if the alleged victim is a family or household member (as defined in § 16.1-228) |
| 2018 | Violation of certain prostitution /sex trafficking offenses under §§ 18.2-355, 18.2-356, 18.2-357, or 18.2-357.1 |

As § 19.2-120 was expanded over the years, it became more likely that a defendant would be subject to the presumption against bail and, if the rebuttal provided by the defendant was not sufficient, pretrial detention.

For each pretrial contact event, the Sentencing Commission identified the most serious offense among all of the charges.[22] Table 21 shows the Top 10 most frequently cited of

[22] The most serious offense was selected based on the statutory maximum penalties specified in the *Code of Virginia*. The offense with the highest statutory maximum penalty was identified as the most serious offense. If two or more offenses in the event had the same statutory maximum penalty, the most serious offense was determined based on the rules specified in the Sentencing Guidelines Manual for selecting the primary offense.

these offenses for defendants subject to the presumptive denial of bail before the law change and for defendants after the law change who would have been subject to the no-bail provision had it still been in effect. These are identified by Virginia Crime Codes (VCC). As the table shows, several drug related offenses (e.g., possess, sell, etc., Schedule I/II drug) are included in the top 10 both before and after the presumption against bail was removed from the *Code*. Two offenses associated with felons possessing a firearm also appear on both lists.

**Table 21: Top 10 Most Serious Offenses for Defendants Meeting the Criteria for Presumptive Denial of Bail (Before and After Law Change)**

| Pretrial Contact Events January 1, 2020, through June 30, 2021 | | Pretrial Contact Events July 1, 2021, through June 30, 2022 | |
|---|---|---|---|
| **Most Serious Offense** | **Percentage** | **Most Serious Offense** | **Percentage** |
| NAR3022F5 - Possession of Sch I/II | 13.0% | NAR3022F5 - Possession of Sch I/II | 12.6% |
| ASL1334F3 - Malicious wounding | 10.7% | ASL1334F3 - Malicious wounding | 10.9% |
| KID1010F5 - Abduct by force without justification | 5.8% | KID1010F5 - Abduct by force without justification | 6.7% |
| NAR3043F9 - Possess with intent to sell, etc. Sch I/II | 5.2% | NAR3043F9 - Possession with intent to sell, etc., Sch I/II | 4.6% |
| WPN5296F6 - Violent felon in possession of firearm | 2.9% | WPN5297F6 - Nonviolent felon convicted within 10yr in possession of firearm | 3.3% |
| WPN5297F6 - Nonviolent felon convicted within 10yr in possession of firearm | 2.9% | NAR3045F9 - Sell, etc., Sch I/II for profit | 2.7% |
| LAR2369F6 - 3rd or subsequent petit larceny | 2.7% | WPN5296F6 - Violent felon in possession of firearm | 2.7% |
| NAR3045F9 - Sell, etc., Sch I/II for profit | 2.2% | ASL1336F2 - Malicious wounding, victim permanently impaired | 2.4% |
| ASL1336F2 Malicious wounding, victim permanently impaired | 2.1% | NAR3038F9 – Possess with intent to sell, etc. Sch I/II, 2nd or subsequent offense | 1.7% |
| NAR3038F9 - Possession with intent to sell, etc., Sch I/II, 2nd or subsequent offense | 1.8% | RAP1121F9 - Aggravated sexual battery, victim under age 13 | 1.6% |

As part of its analysis, the Sentencing Commission examined the Public Safety Assessment (PSA) risk assessment scores for defendants subject to the presumption against bail prior to its elimination.[23] Table 22 shows the distribution of PSA scores for Failure to Appear (FTA) and New Criminal Arrest (NCA) for defendants identified as being subject to the presumptive denial of bail during the 18 months prior to its repeal. As the table shows, about 41.6% of these defendants were classified with a Score of 1 (lowest) or 2 for FTA, while 29.2% of the defendants had a Score of 1 or 2 on the NCA scale. Based on the PSA risk assessment instrument, a sizable proportion of lower risk defendants were subject to the presumption of no bail during that time period.

**Table 22: Defendants Subject to Presumptive Denial of Bail by Public Safety Assessment (PSA) Scores, January 2020-June 2021**

| PSA FTA Score | Percentage | PSA New Arrest Score | Percentage |
|---|---|---|---|
| 1 | 20.7% | 1 | 14.8% |
| 2 | 20.9% | 2 | 14.4% |
| 3 | 22.0% | 3 | 14.1% |
| 4 | 26.5% | 4 | 16.6% |
| 5 | 7.2% | 5 | 25.6% |
| 6 | 2.7% | 6 | 14.5% |

After completing its descriptive analysis, the Sentencing Commission conducted a sophisticated statistical analysis to examine the causal effects of eliminating the no-bail presumption on pretrial decisions and outcomes. The Commission's methodological approach is described in the next section.

## RESEARCH DESIGN, DATA, AND METHOD

In general, the purpose of the Sentencing Commission's study is to empirically examine the effects of a significant change in bail policy on the pretrial system in Virginia. This study explores the impact of eliminating the presumptive denial of bail on the decision to detain or release, the mechanism of release (secured or unsecured bond/personal recognizance), court appearance and new criminal arrest during the pretrial period.

[23] For more information about the Public Safety Assessment (PSA) tool in general and its components, see the Overview of Methodology chapter of this report.

For this study, the Sentencing Commission utilized data from the Pretrial Data Project for defendants with contact events during CY2020 - CY2022. The research focused on adult defendants whose pretrial contact event included a criminal offense punishable by incarceration where a bail determination was made by a judicial officer (magistrate or judge). The Commission utilized the same selection criteria for this study as that used for the descriptive analysis presented in previous chapters of this report. These are listed below:

- For individuals with more than one contact event during the calendar year, only the first event was selected;
    - The defendant's first contact event in a calendar year was excluded if it was identified as a pretrial outcome for an event that occurred during the previous calendar year;

- The following were excluded:
    - Juveniles;
    - Defendants released by law enforcement on a summons;
    - Contact events related solely to a pre-existing court obligation, such as a probation violation, failure to appear, or contempt of court;
    - Contact events that included only non-jailable offenses (i.e., the offenses were not punishable by incarceration); and
    - Defendants who could not be classified or tracked due to missing, incomplete, or conflicting information.

- Also excluded for the purposes of the bail study were defendants for whom it could not be determined with certainty if the presumptive denial of bail applied. Certain aspects of the presumptive denial of bail provision made it difficult to determine with the available automated data whether or not a defendant was subject to the presumptive denial of bail or not. Defendants who could not be clearly categorized were excluded. This group accounted for 26% of the defendants who remained after applying all of the criteria described above.

Excluding the defendants and contact events as described allowed the Commission to isolate defendants whose contact event involved a new offense punishable by incarceration (i.e., the individuals who could be impacted by a significant change in bail policy). Excluding defendants for whom the applicability of the provision could not be determined allows the Commission to better isolate the effects of eliminating the no-bail presumption. Table 23 presents the number of defendants included in the study after all criteria were applied. A total of 157,301 adult defendants with pretrial contact events during CY2020-CY2022 were included in the next stage of analysis. For purposes of

this study, defendants subject to the presumptive denial of bail before the law change and defendants after the law change who would have been subject to the no-bail provision had it still been in effect are labeled as the "treatment" group. All other defendants are labeled as the "non-treatment" group.

**Table 23: Data Used to Study the Impacts of Eliminating Presumptive Denial of Bail in Virginia**

| | Before Law Change (Jan 1, 2020 – Jun 30, 2021) | After Law Change (Jul 1, 2021 – Dec 31, 2022) | Total |
|---|---|---|---|
| Treatment Group: Defendants meeting the criteria specified in the presumptive denial of bail provision | 16,528 | 14,824 | 31,352 |
| Non-Treatment Group: Defendants ***NOT*** meeting the criteria specified in the presumptive denial of bail provision | 65,919 | 60,030 | 125,949 |
| Total | 82,447 | 74,854 | 157,301 |

Source: Virginia Pretrial Data Project (CY2020-CY2022)

The Commission evaluated the impact of eliminating the presumption against bail in two sequential steps. First, the Commission utilized descriptive statistics to examine the pretrial release rate, use of the secured bond (if released), failure to appear and new criminal arrests for offenses punishable by incarceration before and after the change in policy. Next, the Commission employed a statistical technique known as Ordinary Least Squares (OLS) regression that included a Difference in Difference (DiD) design to evaluate the causal effect of the policy change and to quantify the statistically significant effects on pretrial decisions and outcomes. DiD regression is a popular research design in the field of social science to estimate the causal effects of a policy change/intervention on the treatment group when a randomized controlled trial (RCT) is impossible to conduct (Lechner, 2011). Applying DiD allows researchers to estimate the effects of a policy change by comparing four different groups in the model: the treatment group before the policy change, the treatment group after the policy change, the non-treatment group before the policy change and the non-treatment group after the policy change/intervention. The objective is to estimate the mean causal effect of a policy change on outcomes by controlling for potential confounding effects in order to isolate differences in outcomes between treatment and non-treatment groups attributable to the policy change.

The specification equation for DiD regression in this study is shown below:

$$Y_{itc} = \alpha + B * Treat_{itc} + \gamma * Post_{itc} + \delta(Treat_{itc} * Post_{itc}) + \theta_t + \mu_c + \varepsilon_{itc}$$

In the equation above, *Y* represents pretrial outcomes examined in this study. If the pretrial outcome is binary (having a value of 1 or 0), the Commission employed a linear probability model rather than other non-linear probability models (e.g., logistic regression, probit, etc.) as the primary interest is in the statistical significance of the causal effect of changes in bail policy. The Commission also applied robust cluster-adjusted standard errors in the estimations. The four binary outcomes examined with the DiD regression approach were: pretrial release, release on secured bond, charged with failure to appear, and charged with a new criminal arrest. In the specification above, θ represents the contact year fixed effect. It is included to control for any time-related effects that would influence outcomes in both treatment and non-treatment groups. Similarly, μ represents time-invariant judicial circuit fixed effects related to outcomes in both treatment and non-treatment groups. Controlling for year and judicial circuit fixed effects isolates the true causal effect of the policy change by removing any broader trends and time-invariant characteristics within jurisdictions. Most importantly, regarding the specification above, the Commission is mainly interested in the estimated δ, which indicates the average outcomes in the treatment group (those meeting the criteria specified in the presumptive denial of bail provision) before and after the policy change minus the difference in the non-treatment group (those not meeting the criteria for presumptive denial of bail), thus capturing the true causal effect of eliminating the presumption against bail.

As with linear regression models generally, for the estimation to be unbiased and robust, several assumptions should be satisfied.[24] The most critical assumption for the DiD approach is a parallel trend (common) assumption. This assumption generally implies that without the intervention (policy change), the time-varying difference in potential outcomes between the treated and non-treated groups would be constant. Satisfying the parallel trend assumption is relatively difficult since unobservable and observable underlying differences between the treated and non-treated (control) group may vary

[24] There are several assumptions for Ordinary Least Squares (OLS) regression. First, all parameters in the regression model should reflect a linear pattern. Second, the population mean of the error term should be zero. Third, independent variables should not be correlated with error term. Fourth, the errors terms should not be correlated with each other. Fifth, the error term should have a constant variance (homoscedasticity). Lastly, no independent variable should be a perfect linear function of other independent variables (no perfect multicollinearity). For more information, see Wooldridge, J. M. (2016). *Introductory econometrics: A modern approach*. Nelson Education.

over time, resulting in biased estimations of the effects. In the current study, the group meeting the presumption against bail criteria may present some underlying differences over time compared to the other group due to the type and nature of the current offense. Such baseline differences would also vary across time especially when the treated and non-treated groups are widely different in terms of the legal and non-legal characteristics. Given this possible shortcoming, in order to obtain a more robust estimate of the impact of a policy change on specified outcomes, DiD regression can be augmented with Inverse Probability of Treatment Weighting (IPTW). In general, IPTW balances out baseline characteristics between two different groups by applying a weight (based on the inverse of the propensity score of treatment, meaning the likelihood of being subject to presumptive denial of bail) of each individual in both the treated and non-treated groups. This will remove bias originating from varying covariate distributions within comparison groups and achieve similar distributions of covariates (underlying characteristics) between treatment and non-treatment groups (Stuart et al., 2014). In addition to achieving balanced characteristics after the adjustment (Austin & Stuart, 2015), another advantage of using IPTW over other techniques involving propensity score is that it does not sacrifice any existing observations in the treated and non-treated groups as it enables researchers to keep all cases for the analyses (in contrast to propensity score matching, which only uses the matched cases). It is expected that, as a propensity score is weighted on every case, the estimated effect of the policy change would be more robust and reliable (Campbell et al., 2020). The variables used to compute the propensity score for IPTW purposes were: gender, race, age, indigency status, and PSA score (unitary indicator of risk based on defendant's underlying legal characteristics).

## DESCRIPTIVE FINDINGS

Chart 10 presents the changes in pretrial release rates and use of secured bond (for released defendants) before and after the elimination of presumptive denial of bail in Virginia. It is interesting to note that, while the pretrial release rate increased after the policy change for those potentially subject to the presumption of no bail, the release rate decreased for those not subject to the provision. While the directions of the change are different between the two groups, the magnitude of the change is rather small. Descriptive findings are inconclusive as to whether such a change is meaningful and significant. Moreover, pre-trial release rates for those not subject to the no-bail provision were already quite high (over 90%). Regarding the release on secured bond, the percentage of defendants released on secured bond decreased for both groups after the policy change. From descriptive analysis alone, it is difficult to ascertain whether the decrease in the use of secured bond is primarily due to the elimination of the presumption against bail or just the general trend over time, especially given the potential impact of the COVID pandemic beginning in 2020.

## Chart 10: Pretrial Release and Use of Secured Bond Before and After the Elimination of Presumptive Denial of Bail, CY2020-CY2022

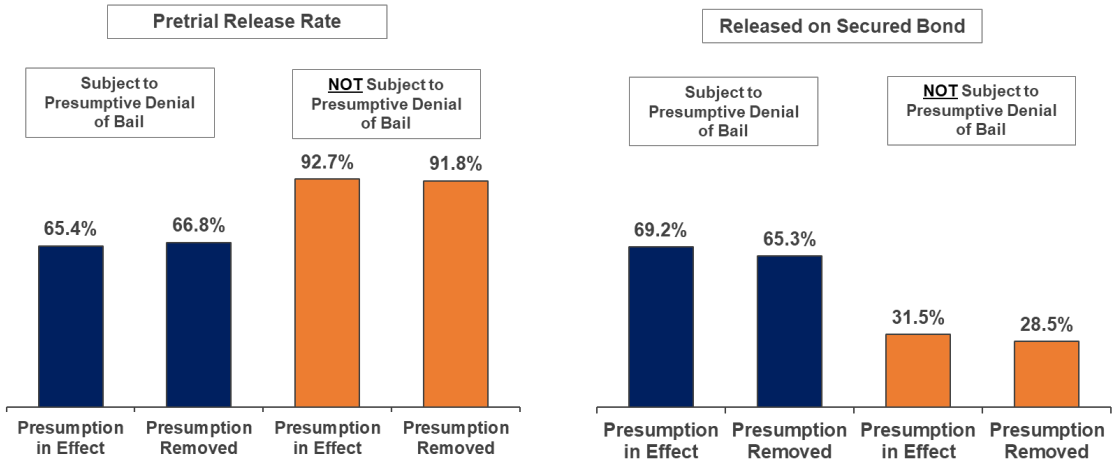
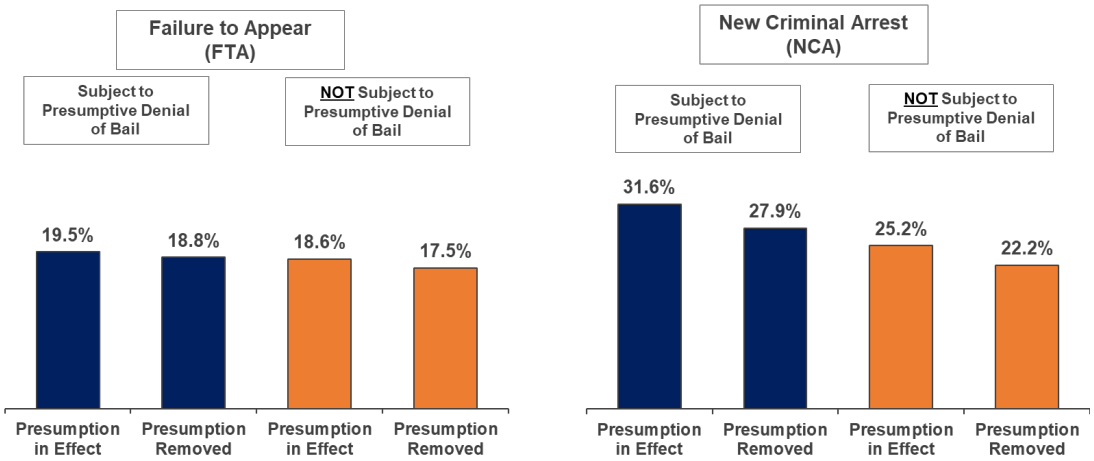



Chart 11 shows the changes in pretrial outcomes before and after eliminating the no-bail presumption. Descriptive analysis suggests that rates of failure to appear and new criminal arrest during the pretrial period declined after the provision was removed from the *Code*. Descriptive analysis, however, cannot separate numerous factors that may be influencing this trend and, therefore, cannot be used to determine whether such changes have been partially or mainly driven by the change in bail policy.

## Chart 11: Pretrial Outcomes Before and After the Elimination of Presumptive Denial of Bail, CY2020-CY2022



The changes in new criminal arrest rates were disaggregated based on the seriousness of the new offense (felony versus misdemeanor). These are displayed in Chart 12. These data suggest that, overall, arrest rates for new felonies and new misdemeanors both decreased following the elimination of the no-bail presumption. Application of appropriate statistical techniques, described later in this chapter, will provide a clearer picture of the extent to which changes in bail policy may have impacted re-arrest rates.

**Chart 12: New Criminal Arrest Rates Before and After the Elimination of Presumptive Denial of Bail, CY2020-CY2022**

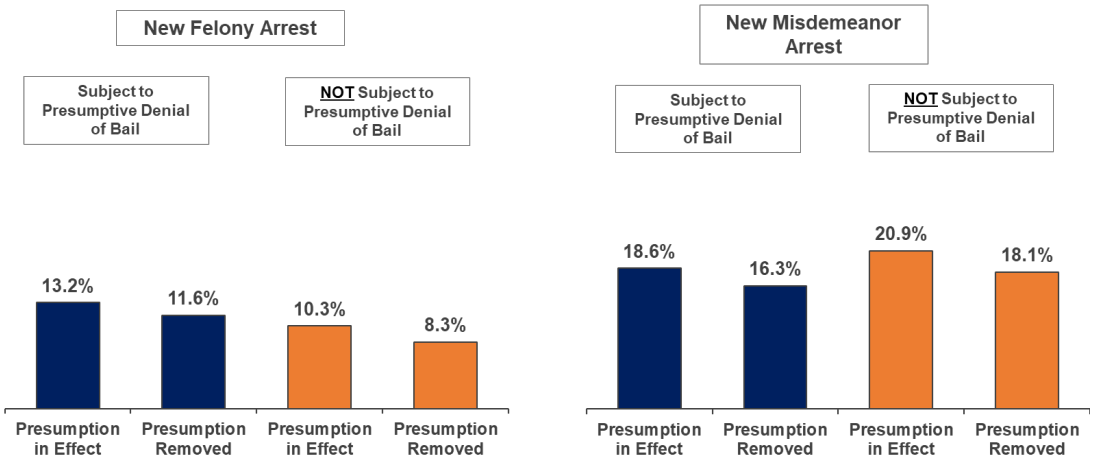



Table 24 provides the distributions of pretrial release rates based on the PSA scores for the treatment and non-treatment groups both before and after the policy change. The treatment group (meeting the criteria for the presumptive denial of bail) generally experienced higher rates of pretrial release after the removal of the presumption against bail for the defendants with low-medium NCA scores (1-4). However, regarding the defendants with higher NCA scores (5-6), the release rates decreased after the change. It is also interesting to note that the non-treatment group (not subject to presumption of against bail) does not share the same pattern. For this group, most PSA NCA scores had release rates that were virtually the same or slightly lower after the change. The drop in release rates was greatest for defendants with PSA NCA scores of 4 and 6.

## Table 24: Pretrial Release Rates by PSA New Criminal Arrest Scores Before and After the Elimination of Presumptive Denial of Bail, CY2020-CY2022

| RELEASE RATES | Subject to Presumptive Denial of Bail | | **NOT** Subject to Presumptive Denial of Bail | |
|---|---|---|---|---|
| PSA NCA Score | Presumption in Effect | Presumption Removed | Presumption in Effect | Presumption Removed |
| 1 | 68.0% | 72.6% | 95.4% | 94.5% |
| 2 | 68.3% | 73.4% | 96.4% | 95.4% |
| 3 | 65.8% | 68.6% | 90.8% | 89.0% |
| 4 | 57.9% | 60.5% | 83.0% | 80.9% |
| 5 | 69.5% | 66.9% | 84.6% | 84.7% |
| 6 | 60.9% | 56.1% | 84.3% | 80.1% |
| Overall | 65.4% | 66.8% | 92.7% | 91.8% |

Tables 25 - 26 show the distributions of failure to appear and new criminal arrest rates by PSA FTA and NCA scores for the treatment and non-treatment groups both before and after the presumption against bail was removed. Regarding new criminal arrest rates (Table 25), both treatment and non-treatment groups show a stair-step increase in new criminal arrest rates as the PSA NCA score increases; this pattern occurred before and after the change in bail policy. Both groups also generally show a decrease in the new criminal arrest rate across nearly all PSA NCA scores after the presumption was eliminated. The only exception is for the defendant group subject to the presumption of no bail with a PSA NCA score of 1, which shows a slight increase in the new criminal arrest rate after the presumption was removed.

## Table 25: New Criminal Arrest Rates by PSA Scores Before and After the Elimination of Presumptive Denial of Bail, CY2020-CY2022

| NEW CRIMINAL ARREST RATES | Subject to Presumptive Denial of Bail | | **NOT** Subject to Presumptive Denial of Bail | |
|---|---|---|---|---|
| PSA NCA Score | Presumption in Effect | Presumption Removed | Presumption in Effect | Presumption Removed |
| 1 | 13.5% | 15.4% | 16.2% | 15.2% |
| 2 | 22.6% | 21.8% | 24.3% | 22.3% |
| 3 | 28.6% | 27.9% | 30.4% | 27.5% |
| 4 | 35.1% | 29.8% | 38.7% | 33.5% |
| 5 | 39.2% | 35.0% | 39.5% | 36.7% |
| 6 | 46.0% | 41.6% | 44.5% | 39.5% |
| Overall | 31.6% | 27.9% | 25.2% | 22.2% |

As for the failure to appear rate (Table 26), patterns are different between the treatment and non-treatment group. For defendants in the treatment group (subject to the presumption against bail), changes in the failure to appear rate were not consistent across PSA FTA scores. That is, the failure to appear rate increased for some PSA FTA score groups but decreased for others. Individuals with the highest PSA FTA score (6) demonstrated the greatest increase in failure to appear after the elimination of the presumption. For defendants in the non-treatment group (not subject to the presumption against bail), the failure to appear rate decreased across almost all PSA FTA score groups after the presumption was removed. Only individuals with a PSA FTA score of 5 recorded an increase in failure to appear after the change.

**Table 26: Failure to Appear Rates by PSA Scores Before and After the Elimination of Presumptive Denial of Bail, CY2020-CY2022**

| FAILURE TO APPEAR RATES | Subject to Presumptive Denial of Bail | | **NOT** Subject to Presumptive Denial of Bail | |
|---|---|---|---|---|
| PSA FTA Score | Presumption in Effect | Presumption Removed | Presumption in Effect | Presumption Removed |
| 1 | 7.5% | 8.6% | 14.5% | 14.1% |
| 2 | 11.6% | 13.3% | 18.4% | 17.4% |
| 3 | 20.7% | 20.6% | 23.3% | 23.3% |
| 4 | 27.7% | 27.5% | 29.2% | 28.0% |
| 5 | 34.8% | 34.5% | 38.6% | 39.7% |
| 6 | 40.6% | 45.3% | 47.3% | 44.9% |
| Overall | 19.5% | 18.8% | 18.6% | 17.5% |

## FINDINGS BASED ON THE DIFFERENCE-IN-DIFFERENCE ANALYTICAL STRATEGY

While the descriptive findings presented above provide some insights into the potential impact of eliminating presumptive denial of bail in Virginia, the utility of descriptive analysis is limited. Descriptive analysis alone cannot be used to determine if the change in bail policy had any direct causal effect on pretrial release decisions or outcomes. Numerous factors may be influencing trends contemporaneously with the change in bail policy. For this reason, the Sentencing Commission conducted an analysis utilizing Difference-in-Difference (DiD) regression augmented with Inverse Probability of Treatment Weighting (IPTW). This approach and its advantages were described in the "RESEARCH DESIGN, DATA AND METHOD" section earlier in this chapter. The objective with this approach is to estimate the mean causal effect of a policy change on outcomes

by controlling for potential confounding effects in order to isolate differences in outcomes between treatment and non-treatment groups attributable to the policy change. Applying DiD with IPTW, the Sentencing Commission estimated the effects of eliminating the presumptive denial of bail by comparing four different groups in the model: the treatment group before the policy change, the treatment group after the policy change, the non-treatment group before the policy change and the non-treatment group after the policy change.

Table 27 presents the statistical results for six different models. Model (1) examines the effect of eliminating the presumption against bail on pretrial release. The estimation value (0.038) is statistically significant at the 1% level. This means that the probability of observing the result by chance is only 1%, which provides very strong evidence that the observed effect is real and not due to random variation. Regarding the magnitude of the effect, the estimation suggests that removing the no-bail presumption increased the likelihood of pretrial release by 3.8% on average for defendants who had been subject to presumptive denial of bail.

**Table 27: Difference-in-Difference Effects of Eliminating Presumptive Denial of Bail on Release and Outcomes (Adjusted with Inverse Probability of Treatment Weighting) CY2020-CY2022**

| | (1) Decision to Release | (2) Use of Secured bond (If Released) | (3) Failure to Appear | (4) New Criminal Arrest during Pretrial Period[a] | (5) New Felony Arrest during Pretrial Period | (6) New Jailable Misdemeanor Arrest during Pretrial Period |
|---|---|---|---|---|---|---|
| Impact of Eliminating Presumptive Denial of Bail (Diff in Diff) | 0.038*** | -0.016** | 0.011* | 0.015** | 0.004 | 0.012* |
| Number of Observations[b] | 149,470 | 129,476 | 129,476 | 129,476 | 129,476 | 129,476 |
| R-Squared | 0.101 | 0.166 | 0.013 | 0.010 | 0.010 | 0.007 |
| Contact Year Fixed Effect | Yes | Yes | Yes | Yes | Yes | Yes |
| Judicial Circuit Fixed Effect | Yes | Yes | Yes | Yes | Yes | Yes |

Note: Statistical Significance - ***1% ** 5% * 10%

For Models (2) – (6), pretrial supervision of the defendant was also included as an additional control variable.

[a] New criminal arrest for offense punishable by incarceration.

[b] Due to missing information for key variables used to calculate the Propensity Score, the application of Inverse Probability of Treatment Weighting (IPTW) reduced the overall number of defendants used in the analysis from 157,301 to 149,470. For Models (2) – (6), only defendants who were released during the pretrial period were utilized, further reducing the number of defendants in analysis to 129,476.

Model (2) examines the effect of eliminating the presumption against bail on the likelihood of release on a secured bond, if the defendant is released, rather than an unsecured bond or release on recognizance. For Model (2), the estimation (-0.016) suggests that eliminating the no-bail presumption decreased the likelihood of release on secured bond by 1.6% on average. It is statistically significant at the 5% level. This finding, while statistically significant, does not reach the same level of confidence as the finding in Model (1).

Model (3) examines the effect of eliminating the no-bail presumption on the likelihood of the defendant failing to appear in court. As shown in Table 27, the estimation (0.011) is positive, suggesting an increase in the likelihood of failure to appear after the presumption was removed; however, the estimation is only statistically significant at the 10% level. Thus, its measured effect is statistically weak. Moreover, the value of the estimation is only .011, meaning an increase in the likelihood of failure to appear of 1.1% on average. Given the relatively small magnitude, its substantive significance is questionable.

Model (4) examines the effect of eliminating the presumption against bail on the likelihood of a new criminal arrest during the pretrial period. The estimation (0.015) is positive in direction suggesting that removing the presumption increased the likelihood of a new criminal arrest by 1.5% on average. The estimation is significant at the 5% level. Although statistically significant, the confidence in this finding is moderate, at best. Moreover, the magnitude of the estimation is relatively small, meaning that its substantive significance is quite modest.

Models (5) and (6) assess the effect of eliminating the presumptive denial of bail on the likelihood of a new felony arrest and the likelihood of a new arrest for a jailable misdemeanor. As Table 27 shows, the estimation in Model (5) for new felony arrest is not statistically significant at the 10% level and the magnitude of the estimation is very small. The estimation in Model (6) is significant at the 10%, indicating that any effect is statistically weak. One possible hypothesis for these findings is that, if the change in bail policy increased the likelihood of a new criminal arrest, it was mainly driven by its impact on new misdemeanor arrests. Overall, however, the evidence of an effect on new criminal arrests is only marginally significant.

In addition to these models, the Sentencing Commission also tested the inclusion of a variable to account for the impact of the COVID pandemic beginning in March 2020. The inclusion of this time-specific factor does not change the statistically significant effect of eliminating presumptive denial of bail on pretrial release or the magnitude of the effect. Finally, the Commission examined the impact of the change in bail policy on the amount of the secured bond for released defendants and did not find any significant effect.

## LIMITATIONS

The research presented in this chapter has two important limitations that should be discussed. First, the study excluded defendants for whom it could not be determined with certainty if the presumptive denial of bail applied. Certain aspects of the presumptive denial of bail provision made it difficult to determine with the available automated data whether or not a defendant was subject to the presumption against bail. Defendants who could not be clearly categorized were excluded. This group accounted for 26% of the defendants identified for the study. Excluding defendants for whom the applicability of the provision could not be determined allowed the Sentencing Commission to better isolate the effects of eliminating the no-bail presumption. If, however, the excluded defendants exhibit systematic patterns or characteristics different from other defendants, the estimations generated from the statistical models may suffer from omitted variables bias. Estimation bias is a problem and could impact the accuracy and interpretation of the results. To address this potential shortcoming, the Commission performed additional robustness checks by including the 26% of the defendants in models with the treatment group (subject to presumptive denial of bail) and then in models with the non-treatment group (not subject to presumptive denial of bail). This process allowed the Commission to assess the potential impact of the excluded defendants on the results. ***These checks revealed that excluding 26% of the defendants from the analysis did not lead to different estimations of the effects. This suggests that the exclusion of 26% of the defendants did not result in biased estimations.***

The second limitation relates to criminal history information used for the Pretrial Data Project. To date, the Sentencing Commission's work with the Project has been limited to using in-state criminal history records. Out-of-state criminal history records have not been available. This limitation affects the measurement of prior record, the estimation of risk based on the PSA, and outcome measures such as new criminal arrest during the pretrial period. Some of the criteria for presumptive denial of bail previously found in § 19.2-120 were based on the defendant's previous convictions. As the defendant's prior out-of-state convictions are not captured in the Project, this limitation may affect the classification of defendants into study groups (i.e., some defendants may be incorrectly classified as not subject to the presumptive denial of bail because their out-of-state convictions are not known). The impact of this limitation on the results is not clear.

As discussed earlier in this report, the Sentencing Commission previously submitted the required applications and all related documents to the Federal Bureau of Investigation (FBI) in order to obtain out-of-state criminal history records for the Project. After lengthy delays, the FBI has finally approved the Commission's request. The Commission is working with the FBI to standardize data exchange procedures. The Commission anticipates that out-of-state criminal history records will be included in the Project beginning in 2025.

## CONCLUSIONS & RECOMMENDATIONS FOR FUTURE RESEARCH

With four years of data now available, Virginia's Pretrial Data Project has become a valuable resource for a wide array of research, including examination of the impact of significant policy changes in the Commonwealth. This year, the Sentencing Commission conducted a special study to examine the effects of abolishing the presumptive denial of bail in Virginia. Results of the Sentencing Commission's empirical study indicate that eliminating the presumption against bail in 2021 increased pretrial release among defendants who would have been subject to the provision (had it still been in effect). This finding is highly statistically significant. Results also suggest that the likelihood of failure to appear and new criminal arrest may have increased among affected defendants after the policy change; however, the estimations are only marginally significant and the magnitude of the estimated effects is rather small.

Based on these initial findings, the Sentencing Commission recommends that future research continue to examine the casual relationships suggested by the research presented in this report. Future research, for example, may employ additional quantitative techniques to address potential shortcomings in the current study. Regarding the excluded defendants (who could not be clearly categorized as subject or not subject to the no-bail presumption), future research could incorporate a more advanced quantitative approach to reassign the excluded cases into one of two groups by computing the likelihood of being subject to the presumption of no bail using the available information (e.g., multiple imputation). Furthermore, after securing out-of-state criminal history records from the FBI, the Commission may perform more accurate group-assignment, rerun the statistical models, and examine whether the initial findings presented in this study differ substantially from results generated with the additional data. Also, by employing other alternative quantitative analytical tools (e.g., synthetic control methods), future research may revisit the general findings in this study to determine if they hold true. Another possible refinement of the current research may be to examine other outcomes beyond the pretrial period. While the current study primarily focuses on pretrial decisions and new criminal arrests during the pretrial period, future research can investigate differences in conviction rates between those subject to the presumption of no-bail prior to its elimination in 2021 and those not subject to the provision. Future research could also examine differences in recidivism (re-offending) between the two groups after case conclusion and, if such difference is found, what other factors may be interrelated in affecting recidivism.

## References

Austin, P. C., & Stuart, E. A. (2015). Moving towards best practice when using inverse probability of treatment weighting (IPTW) using the propensity score to estimate causal treatment effects in observational studies. Statistics in Medicine, 34(28), 3661-3679.

Campbell, C. M., Labrecque, R. M., Weinerman, M., & Sanchagrin, K. (2020). Gauging detention dosage: Assessing the impact of pretrial detention on sentencing outcomes using propensity score modeling. *Journal of Criminal Justice*, *70*, 101719. https://doi.org/10.1016/j.jcrimjus.2020.101719

Stuart, E. A., Huskamp, H. A., Duckworth, K., Simmons, J., Song, Z., Chernew, M. E., & Barry, C. L. (2014). Using propensity scores in difference-in-differences models to estimate the effects of a policy change. Health Services and Outcomes Research Methodology, 14, 166-182.

Wu, S., & McDowall, D. (2024). Does bail reform increase crime in New York State: Evidence from interrupted time-series analyses and synthetic control methods. Justice Quarterly, 41(3), 371-399.

Zhou, A., Koo, A., Kallus, N., Ropac, R., Peterson, R., Koppel, S., & Bergin, T. (2023). Synthetic Control Analysis of the Short-Term Impact of New York State's Bail Elimination Act on Aggregate Crime. Statistics and Public Policy, 11(1), 2267617.

Ropac, R. (2024). Does New York's Bail Reform Law Impact Recidivism? A Quasi-Experimental Test in the State's Suburban and Upstate Regions.

Craigie, T. A., & Grawert, A. (2024). Bail Reform and Public Safety.

# Locality Findings

Descriptive findings for each locality in Virginia are provided in ***Appendix C: Locality Descriptive Findings for the CY2021 Cohort*** and ***Appendix D: Locality Descriptive Findings for the CY2022 Cohort***. Ultimately, examination of the data revealed that localities varied across numerous measures within the dataset. Virginia is a diverse Commonwealth with a population of over 8.5 million across 133 localities. Localities differ on many factors, such as population size and density, demographics, economic conditions and employment availability, median household income, cultural factors, education, religious characteristics, and climate, including seasonal weather conditions. Localities also vary in terms of judicial officers, court practices, total number of sworn law enforcement officers, Pretrial Services Agencies, bail bondsmen, other practitioners, and services (e.g., mental health and substance use treatment) available during the pretrial period. For instance, Pretrial Services Agencies vary in terms of the number of localities served, funding, total number of investigations and supervision placements, average daily caseload, and overall success rates. Additionally, when examining individual localities, factors that may impact the type and volume of crime in the locality must also be taken into account, as these considerations ultimately impact the workload of law enforcement, courts, prosecutors, defense attorneys, Pretrial Services Agencies, bail bondsmen, and correctional facilities.

***Appendix C and Appendix D*** are available on the Sentencing Commission's website at http://www.vcsc.virginia.gov/pretrialdataproject.html .

# Challenges

During the course of the Project, the Sentencing Commission has encountered several challenges that are worth noting in this report.

Criminal justice data systems are not integrated in Virginia. As has been discussed in this report, compiling the data for the Project requires numerous iterations of matching, merging and data cleaning to ensure accuracy when connecting information from the respective data systems to individual defendants in the cohort. The Sentencing Commission also had to address issues related to the accuracy and completeness of data in criminal justice data systems. For example, the Sentencing Commission found a relatively high percentage of missing data and data containing errors in personal information in charge-based court records, including birthdate, name, and social security numbers. This makes it difficult to group charges by individuals and determine contact events. Sometimes, inaccurate information is recorded due to human error. It is relatively common to find that birthdate and defendant's name were incorrectly typed into the system. One person with typos in his or her name across different charges filed on the same day may be mistakenly viewed as different individuals. To address this data quality problem, the Sentencing Commission employed a computerized algorithm to calculate similarity indexes of personal fields, which enabled the identification of the same defendant despite minor typos or missing information. However, no algorithm provides perfect accuracy.

The data quality issue is not exclusive to personal information. The Sentencing Commission found a significant amount of missing Virginia Crime Codes (VCCs) in the General District Court and Juvenile and Domestic Relations Court Case Management Systems. VCCs uniquely identify each offense defined in the *Code of Virginia* and, without them, the Sentencing Commission had to rely on recorded statute codes and offense descriptions to fill in the missing offense VCCs to the extent possible.

The Commission also found that some information from one data source is not consistent with that of another. For instance, contact and release dates of a defendant in the E-magistrate system may be several days apart (two days or more) from the jail-commitment and release dates seen in the Local Inmate Data System (LIDS), while both records suggest the same contact event based on the other available information, such as defendant's name, birthdate, VCC, offense date, etc. This type of issue is not common, but if such inconsistency is identified, the Commission utilizes LIDS, as it is considered the most reliable source to determine the actual jail commitment and release dates.

Furthermore, tracing a case from the contact event date to the final disposition is challenging, given the lack of uniformity in Virginia's criminal justice systems. For instance, while an Offense Tracking Number (OTN) is assigned to each charge as a unique charge identifier, some Circuit Court clerks assign new OTNs when the case is filed in the Circuit Court in their jurisdiction (e.g., when a charge at the General District Court level is certified to the Circuit Court). Similarly, if the case is transferred to another jurisdiction, a new OTN is assigned to the same charge. When the OTN is changed, the Sentencing Commission has to use other details, such as contact date, names, birthdate, or VCC, to locate the same charge information in other systems, which increases the possibility of inaccurate results due to human error at data entry.

Given these issues, the Sentencing Commission recommends that, as future criminal justice data systems are designed, agencies collaborate on the development of an integrated system that utilizes uniform identifiers for individuals as well as for charges across all criminal justice systems in the Commonwealth.

# Future Research

Virginia's Pretrial Data Project has laid the groundwork for the collection of comprehensive data for the purpose of developing a fuller understanding of all aspects of the pretrial process in the Commonwealth. Descriptive analysis provides a snapshot of pretrial defendants at key points in the pretrial process. While descriptive findings at the aggregate level help policy makers, agency and program administrators, and researchers understand the general trends of pretrial process in Virginia, this approach has its limitations. Descriptive analysis cannot explain why differences may exist across groups of defendants, nor can it suggest any causal relationships. That is to say, descriptive findings based on the relationships between two or more groups or categories do not imply statistically important causal associations.

To address the limitations of descriptive analysis, more sophisticated approaches using multivariate statistical techniques are necessary. The Sentencing Commission began this work in 2023 by conducting analyses to evaluate the predictive validity of the PSA risk assessment instrument on Virginia's pretrial population. This year, the Sentencing Commission conducted a special study to examine the causal effects associated with the elimination of presumptive denial of bail in Virginia, specifically the impact of this policy change on pretrial release decisions, release on secured bond, failure to appear, and new criminal arrest during the pretrial period.

In the coming year, the Sentencing Commission plans to conduct additional analyses of the pretrial dataset using multivariate statistical techniques. A number of research questions may be examined with this type of analysis. These research questions include:

- What are the significant temporary changes and enduring impacts on Virginia's pretrial system directly caused by the COVID pandemic?
- What significant mid-term and long-term effects does the pretrial decision have on defendants? For example, does initial pretrial detention lead to different disposition outcomes between two defendants who share similar legal characteristics? How does the pretrial decision affect the likelihood of recidivism after conclusion of the case?
- What effect does secured bond or bond amount have on the appearance rate?
- What factors impact how quickly a new criminal arrest occurs?
- What factors affect the decision to release defendants pretrial?

In addition, the Sentencing Commission will seek input from policy makers, agency and program administrators, and academics regarding additional research questions. As this work is completed, the Sentencing Commission will present the findings in future reports.