

Securing Release: Cash Bail in Hampton Roads



SECURING RELEASE: CASH BAIL IN HAMPTON ROADS

Virginia's current system of cash bail too often determines who has money, not who is dangerous, and we can't have a justice system that determines fairness and freedom based on wealth and means.
- Virginia Attorney General Mark Herring, October 2018

In 2018, Virginia Attorney General Mark Herring called for cash bail reform in a letter to the Virginia State Crime Commission (VSCC). He argued that the current bail system too often leaves low-risk defendants in jail based solely on their inability to pay. Following Herring's letter, at least five Virginia commonwealth's attorneys, including Norfolk's Greg Underwood, changed local policies with the intent of reducing or eliminating cash bail. In January 2021, commonwealth's attorneys from Newport News, Portsmouth, Norfolk and Hampton joined eight other Virginia prosecutors in calling for an end to cash bail.¹

Cash bail, also known as secured bonds, is a form of pretrial release where defendants must secure bonds with cash or property in order to be released from jail while awaiting trial. Cash bail provides an incentive for defendants to return for their court appearance, since the surety is not reimbursed unless the defendants return to court in accordance with the terms of their release. Proponents of the cash bail system argue that it provides a financial incentive for defendants to appear, lowers jail populations and increases accountability.

Critics, however, contend that the cash bail system often leaves low-risk defendants in jail for unduly long periods of time. The ability to pay determines whether one remains in confinement or is released into society. A 2013 study by the Virginia Department of Criminal Justice Services (DCJS) found that 11% of defendants were still in jail seven days from their first appearance, simply because they could not afford to post a secured bond. Of those defendants, 92% were held on bonds valued at \$5,000 or less. Opponents contend that cash bail exacerbates racial disparities, as Black defendants are more likely to be denied bail and face higher bond amounts.² Advocates for reform also note that cash bail raises constitutional concerns, since the unequal burden placed on indigent defendants is inconsistent with the Fourteenth Amendment's equal

protection clause. From this viewpoint, the arbitrary nature of bail decisions runs against the right to due process.

In October 2020, Corey Hunter was held in a Fairfax jail for almost a week on a \$2,500 secured bond for a DUI - a first offense that would not likely result in additional jail time. Unable to afford the bond, Hunter appealed the court's decision. Fairfax Circuit Court Judge David Bernhard ruled that the use of cash bail in this case "would only be the product of resort to custom, instinct and arbitrary action and thus would be an unconstitutional application of Virginia's statutory bail bond scheme and in derogation of the Due Process Clause of the United States Constitution." Bernhard appeared to be the first Virginia judge to issue an opinion opposing the practice of cash bail.

Recent research has found that pretrial detention for as little as two days can disrupt employment, child care and housing.³ Pretrial detention is associated with an increased likelihood of conviction, as detained defendants face additional pressure to accept an unfavorable plea bargain in order to be released with time served. Pretrial detention may also lead to higher rates of recidivism; research has found that detaining low- and moderate-risk defendants for a short time can increase their likelihood to reoffend during the

¹ A PDF copy of the letter is available at: <https://www.pilotonline.com/news/crime/vp-nw-progressive-prosecutors-20210104-i3zgfbrvqjag5nxzkuualu52ny-story.html>.

² David Arnold, Will Dobbie and Crystal S Yang, "Racial Bias in Bail Decisions," *The Quarterly Journal of Economics*, vol. 133, issue 4, November 2018, pages 1885-1932, <https://doi.org/10.1093/qje/qjy012>.

³ Will Dobbie, Jacob Goldin and Crystal S. Yang, 2018, "The Effects of Pre-trial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges," *American Economic Review*, 108 (2): 201-40.

pretrial and post-trial periods.⁴ Indigent defendants are less likely to secure release and are therefore more likely to face the negative consequences of pretrial detention.

There appears to be a growing movement questioning the need for cash bail and seeking ways to reform the cash bail system without compromising public safety. Since 2017, New York, New Jersey, Alaska and Maryland, among other states, have passed legislation, and in some cases, constitutional amendments, with the intent of reducing the reliance on cash bail. On Feb. 22, 2021, Gov. J.B. Pritzker of Illinois signed legislation making Illinois the first state to eliminate cash bail. In Virginia, and in particular, Hampton Roads, a number of commonwealth's attorneys have publicly signaled a desire to significantly reduce (if not eliminate entirely in most cases) the use of cash bail.

On any given day in 2019, there were over 3,154 pretrial inmates in Hampton Roads local and regional jails. While some of these inmates were not released due to the severity of their crimes or risks posed to the public, others languished in pretrial detention, unable to find enough collateral to gain release through a secured bond. Even though violent and property crimes have decreased since 1990, incarceration rates have increased in Hampton Roads, Virginia and the United States. From 2000 to 2018, the Hampton Roads pretrial inmate population rose by approximately 1.6% per year. In some cities and counties in our region, the pretrial population grew by more than 3% per year.

The most recent national data on pretrial detainees provide comparisons among Hampton Roads, Virginia and the United States. In 2019, on average, there were more pretrial inmates per 100,000 residents in Hampton Roads (183.5) than Virginia (135.9) or the United States (146.4).⁵ The conversation about how to reduce the pretrial population includes advocates of equity in the justice system, those concerned about the

⁴ Christopher T. Lowenkamp, Marie VanNostrand and Alexander Holsinger, "The Hidden Costs of Pre-trial Detention," National Institute of Corrections, November 2013.

⁵ We use data from the Virginia State Compensation Board Local Inmate Data System for Hampton Roads and Virginia and data from the Bureau of Justice Statistics for the United States.

relatively high rates of incarceration in the United States and taxpayers concerned about the cost of housing, feeding and supervising the incarcerated.

We estimate that if Virginia were to enact cash bail reform, the average daily pretrial population in Hampton Roads would decline between 5% and 20%. Incarceration costs for cities and counties in Hampton Roads would decline between \$5 million and \$21 million a year. Cash bail reform would also reduce costs for those awaiting trial, not only in terms of having to pay for bail bond services, but also increasing defendants' ability to work while awaiting trial. Every day in confinement is a potential day of lost wages for those who have not yet been convicted of a crime. We estimate that the economic impact of cash bail reform, assuming that those awaiting trial are released, could approach \$80 million annually for Hampton Roads.

In this chapter, we look at the use of cash bail, its prevalence in bail conditions, average bond amounts and cash bail's impact on pretrial detention. We cite statistics on the number of people in pretrial detention in Hampton Roads and consider who among them might be affected by bail reform. We examine the cost of pretrial detention to taxpayers in the region and determine whether there would be significant savings if cash bail were eliminated.

History Of The Cash Bail System

While the origins of cash bail can be traced back to the Romans, America's notion of bail primarily has English roots.⁶ The early American bail system embraced most of England's bail practices, including the protection against excessive bail. In 1789, Congress passed the Judiciary Act, requiring defendants for all noncapital federal offenses to be considered for bail. The

⁶ Timothy R. Schnacke, Michael R. Jones and Claire M.B. Brooker (2010), "The History of Bail and Pre-trial Release," Pretrial Justice Institute.

right to bail under the Judiciary Act and the protection against excessive bail as laid forth in the Eighth Amendment of the U.S. Constitution became two of the central principles of the U.S. bail system.

America's early cash bail system also adopted the English bail practice of personal sureties.⁷ What would be considered an unsecured bond today, a personal surety is a promise by a family member or associate of the defendant to pay the debt in the event of default. The practice of personal sureties declined in the 1800s as fewer people wanted to take on the obligation of defendants without payment. In the absence of personal sureties, judges began utilizing secured bonds as a means of ensuring court appearance. The use of secured bonds changed the traditional American bail practice from release conditional on a promise to pay if default occurs, to release conditional on payment. The shift led to the rise of the commercial bail bond industry in the early 20th century.

Criticism of the cash bail system began as early as the 1920s with rising concern about the impact of secured bonds on low-income defendants.⁸ Throughout the 1950s and 1960s, research highlighted the disproportionate share of low-income defendants in jail awaiting trial. The 1966 Bail Reform Act was the first legal revision to bail since the Judiciary Act of 1789.⁹ This act instructed judges to favor the least restrictive form of bail conditions for noncapital federal defendants and to use bail only if release on recognizance was not feasible.

The 1984 Bail Reform Act required judges to consider the degree of danger defendants posed to public safety when determining bail. The U.S. Supreme Court, in *U.S. v. Salerno* (1987), upheld the constitutionality of this decision, resulting in a shift in bail practices. Before *U.S. v. Salerno*, the purpose of bail was to ensure a defendant's court appearance. Following this ruling, most states, including Virginia, amended their bail statutes to instruct judges to use two main criteria when determining bail conditions: court appearance and public safety.

7 Muhammad B. Sardar (2019), "Give Me Liberty or Give Me . . . Alternatives? Ending Cash Bail and Its Impact on Pretrial Incarceration," *Brooklyn Law Review*, vol. 84, issue 4.

8 Timothy R. Schnacke (2014), "Fundamentals of Bail: A Resource Guide for Pre-trial Practitioners and a Framework for American Pre-trial Reform," National Institute of Corrections, <https://s3.amazonaws.com/static.nicic.gov/Library/028360.pdf>.

9 Hayley E. Miller (2016), "Taming the Wild West: Using Unsecured Bail Bonds in Nevada's Pretrial-Release Program," *Nevada Law Journal*, <https://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=1688&context=nlj>.

Bail statutes in the Commonwealth have since set forth a general presumption to grant bail unless the defendant poses a risk to public safety or court appearance. The Virginia General Assembly amended its bail statutes in 1996 to require a presumption against bail for certain felony offenses and circumstances. In 2000, the General Assembly required the use of secured bonds in certain circumstances. Virginia Code 19.2-123 states: "Any person arrested for a felony who has previously been convicted of a felony, or who is presently on bond for an unrelated arrest in any jurisdiction, or who is on probation or parole, may be released only upon a secure bond." The provision can only be waived with the approval of both the presiding judge and local commonwealth's attorney.

The Pretrial Process

Bail conditions are one part of the entire pretrial process, which encompasses the various stages of a criminal case from arrest to trial and/or sentencing. If an arresting officer has probable cause to believe that someone has broken the law, the officer can issue a summons or take the person into custody.¹⁰ A summons is simply a written promise to appear in court. Once signed, the accused is free to go. If taken into custody and brought to jail, the defendant first receives a bail hearing. In Virginia, the local magistrate conducts bail hearings.

At the end of the bail hearing, the magistrate can deny bail (finding the defendant to be too high a risk to public safety or court appearance) or grant bail based on specified terms and conditions. There are three main forms of pretrial release. Release on personal recognizance requires a written promise to appear and compliance with any bail conditions imposed by the court. In the case of unsecured bonds, where a bond is issued in exchange for bail but does not need to be secured before release, the judge can forfeit the bond and enter judgment if the defendant fails to appear in court.

The final form, secured bonds, or "cash bail," requires the bond amount to be secured with either a cash deposit or solvent surety. If defendants do not have

10 "Criminal Case Procedures," General District Court Manual, <http://www.courts.state.va.us/courts/gd/resources/manuals/gdman/chapter03.pdf>.

sufficient cash or collateral, they can use a third party. A third-party surety can be either a private surety who owns real property, such as a family member or friend, or a bail bondsman. Bail bondsmen guarantee the bond amount and charge the defendant a nonrefundable fee. The Virginia Code requires that the fee be no less than 10% and no more than 15% of the bond amount. In 2018, there were 375 actively licensed bail bondsmen in Virginia.¹¹

Risk Assessment Tools

Other than the presumptions against bail for some offenses and the requirement of secured bonds for certain circumstances, magistrates have wide discretion in determining bail. At a bail hearing, the job of a magistrate is to conduct a risk assessment of the defendant. Judges in the Commonwealth are required to consider a list of factors when making this assessment, such as the character of the accused, the nature of the offense and the defendant's ability to pay the bond. The weight of these factors in determining bail, however, is left to the judge's calculation. With no standardized system, judges must use their discretion to predict and mitigate a defendant's risk with the right release conditions. The result of such a system not only creates disparate outcomes, but also relies on wealth to mitigate risk.

Risk-assessment tools are used to replace the subjective nature of bail with a data-driven empirical system based on risk. These tools measure a defendant's risk of pretrial failure (new arrest and court appearance) based on a series of risk factors. The goal of risk instruments is to reduce pretrial detention rates by properly identifying low-risk defendants for release, while also detaining fewer defendants based solely on their inability to pay by "replacing wealth with risk."¹²

In a 2019 national survey, 2 in 3 cities and counties used a risk-assessment tool, and more than half reported implementing an instrument over the last five years.¹³ Virginia was the first in the country to implement a statewide research-

based, pretrial risk-assessment tool in 2005. Known nationally as the Virginia Model, the Virginia Pretrial Risk Assessment Instrument (VPRAI) has since been implemented in jurisdictions in 10 states and statewide in Maine. The VPRAI examines eight risk factors that are weighted to create a risk score. Results from the VPRAI are shared with the judge, prosecutor and defense attorneys.

In 2017, the VPRAI was revised and supplemented with Praxis, a decision tool that incorporates the revised VPRAI and the defendant's current charges to provide a recommendation of whether to deny or admit bail and, in the case of pretrial release, the level of supervision needed for the defendant.¹⁴ Where the VPRAI measures the risk of pretrial failure, the Praxis tool manages that risk by recommending the most efficient bail conditions.

Risk Factors Scored on VPRAI-Revised¹⁵

1. Active community criminal justice supervision
2. Current charge is felony drug, felony theft or felony fraud
3. Pending charge at time of arrest
4. One or more adult criminal convictions
5. Two or more failures to appear
6. Two or more violent convictions
7. Unemployed at the time of arrest
8. History of drug abuse

In recent years, some criminal-justice advocates who once supported the use of risk-assessment tools have argued that the tools themselves can perpetuate racial disparities.¹⁶ Critics argue that the data and methodology used to derive risk scores, such as a defendant's criminal history, reflect the structural and institutional racism inherent and only exacerbate existing disparities. Pretrial

11 The Virginia State Crime Commission's 2018 Annual Report, <http://vsc.c.virginia.gov/2019/VSCC%202018%20Annual%20Report.pdf>

12 "Making Sense of Pretrial Risk Assessments," National Association of Criminal Defense Lawyers, <https://www.nacdl.org/Article/June2018-MakingSenseofPre-trialRiskAsses>.

13 University of Pretrial, Pretrial Justice Institute, 2019, <https://university.pre-trial.org/viewdocument/scan-of-pre-trial-practices-pji-20>.

14 Virginia State Crime Commission, 2017 Annual Report, <https://rga.lis.virginia.gov/Published/2018/RD207/PDF>.

15 Virginia State Crime Commission, 2017 Annual Report, <https://rga.lis.virginia.gov/Published/2018/RD207/PDF>.

16 "Making Sense of Pre-trial Risk Assessments," National Association of Criminal Defense Lawyers, <https://www.nacdl.org/Article/June2018-MakingSenseofPre-trialRiskAsses>.

risk-assessment tools have been around for some time, yet there is a lack of consensus on their efficacy in reducing cash bail and pretrial detention.¹⁷

New Jersey implemented a risk-assessment tool as part of its cash bail reform legislation in 2017. While the jail population in New Jersey declined, racial disparities persisted. Jail data for Virginia from the Vera Institute for Justice show that, on average, there were 1,388 Black or African American and 283 white jail inmates for every 100,000 residents in 2005.¹⁸ In 2015, 10 years after the implementation of the VPRAI, the jail population rates for Black or African American and white individuals were 1,115 and 352, respectively. Relative to 2005, there was improvement in the incarceration rates for Black inmates relative to the Black population in Virginia. Yet, significant disparities in incarceration rates persist, as there were still roughly three times more Black inmates than white inmates per 100,000 residents in the Commonwealth.

Pretrial Services Agencies

In Virginia, pretrial services agencies (PSAs) serve two main functions: to collect and deliver information to assist judges in determining bail, and to supervise defendants on pretrial release to monitor compliance with bail conditions such as electronic monitoring, drug testing or maintaining employment. Established in the 1990s, PSAs are locality-based agencies, administered and funded by the Virginia Department of Criminal Justice Services and localities. As of 2019, 75% of Virginia's cities and counties had a PSA. Only 4 of the 16 Hampton Roads cities and counties – Franklin, Southampton, Isle of Wight County and Suffolk – do not have one.

Pretrial supervision is touted as a possible alternative to cash bail and pretrial detention for defendants deemed too high-risk for a personal recognizance bond. However, data from the Virginia Pre-trial Data Project (VPDP) show that in fiscal year 2019, approximately 53% of all defendants placed on

pretrial supervision were also ordered to post a secured bond. The data do, however, show a high pretrial success rate. In 2019, 93% of defendants on pretrial supervision returned for their scheduled court appearance and did not have their bail revoked due to a new arrest.

The Commonwealth has long been recognized as a leader in bail system reform. States such as Illinois and New Jersey, which in recent years passed comprehensive legislative reforms aimed at eliminating cash bail, have made risk tools and pretrial supervision a central part of reform. These tools have been in place in Virginia for more than a decade. Nevertheless, as we show in the next few sections, cash bail remains a common form of pretrial release in the Commonwealth, and pretrial detention rates in Virginia and Hampton Roads are not far from the national average. The answer as to why cash bail persists as a method of pretrial detention comes down to judicial discretion, not enough oversight on the effectiveness and take-up rate of these reform tools, and statutory requirements that in some cases require secured bonds for bail.

Pretrial Detention

From 1990 to 2018, property and violent crimes in the United States trended down, while incarceration rates increased (1990-2008) and then declined back to levels observed near the turn of the century (Graph 1). From 1990 to 2018, the rate of violent and property crimes per 100,000 Americans declined 52.5% and 43.6%, respectively, while the jail incarceration rate increased by 36.9%. As of May 2021, the United States had one of the highest reported incarceration rates in the world, with 639 inmates per 100,000 residents.¹⁹

Americans not yet convicted of a crime make up an increasing proportion of the jail population. From 1990 to 2019, the number of convicted inmates in local jails increased by almost 30% (Graph 2). Over the same period, the number of pretrial inmates increased by approximately 132%. Pretrial inmates accounted for 66% of the U.S. jail population in 2019. The U.S.

¹⁷ Evan Lowder, Carmen Diaz, Eric Grommon and Bradley Ray, "Effects of Pre-trial Risk Assessments on Release Decisions and Misconduct Outcomes Relative to Practice as Usual" (2021), *Journal of Criminal Justice*, vol. 73, March-April 2021, https://www.sciencedirect.com/science/article/abs/pii/S0047235220302488?dgcid=rss_sd_all.

¹⁸ "Virginia Incarceration Trends," Vera Institute for Justice, <https://trends.vera.org/rates/virginia>.

¹⁹ "Countries with the most prisoners per 100,000 inhabitants, as of May 2021," Statista Research Department, June 2, 2021.

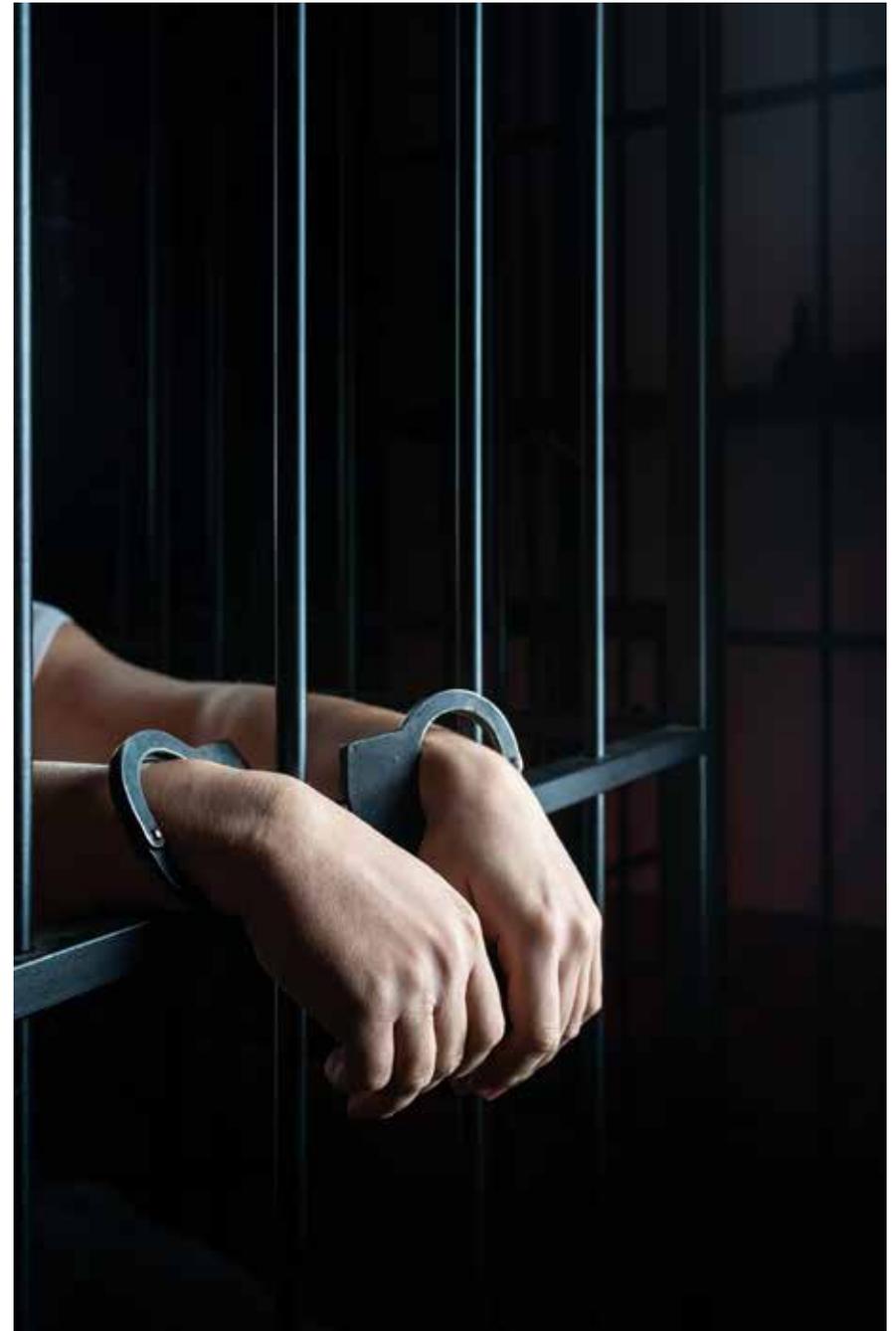
leads the world in terms of the number of pretrial detainees, with nearly twice as many as any other country in the world. On an average day in 2019, more than 480,000 Americans confined in local jails had not yet been convicted of a crime. While some were deemed a flight risk or threat to public safety, other pretrial inmates remained in jail due to their inability to post bail.

Virginia mirrors national trends in the pretrial population. While the share of pretrial inmates in the total jail population in Virginia in 2018 (52%) was below that of the nation (65%), the rate of increase was faster in the Commonwealth than for the nation (Graph 3). For Hampton Roads in 2018, almost half of the inmates were pretrial detainees, a lower rate than that of Virginia or the nation. This share remained relatively constant over the previous decade.

On an average day in 2019, half of the 11,600 inmates in Virginia jails had yet to be convicted of a crime. Of these 11,600 inmates, 3,154 were confined in Hampton Roads jails. To better understand the types of charges for those held pretrial, we can look to statistics provided by Virginia's Department of Criminal Justice Services (DCJS). These data capture the most serious offense types for the 170,000 pretrial commitments to Virginia jails in 2019.²⁰ In half of these, the most serious charge was a misdemeanor. Approximately 12% were detained for a violent felony (Graph 4). In misdemeanor cases especially, pretrial detention can pose a significant problem, as defendants are more likely to plead guilty to gain release from jail.²¹

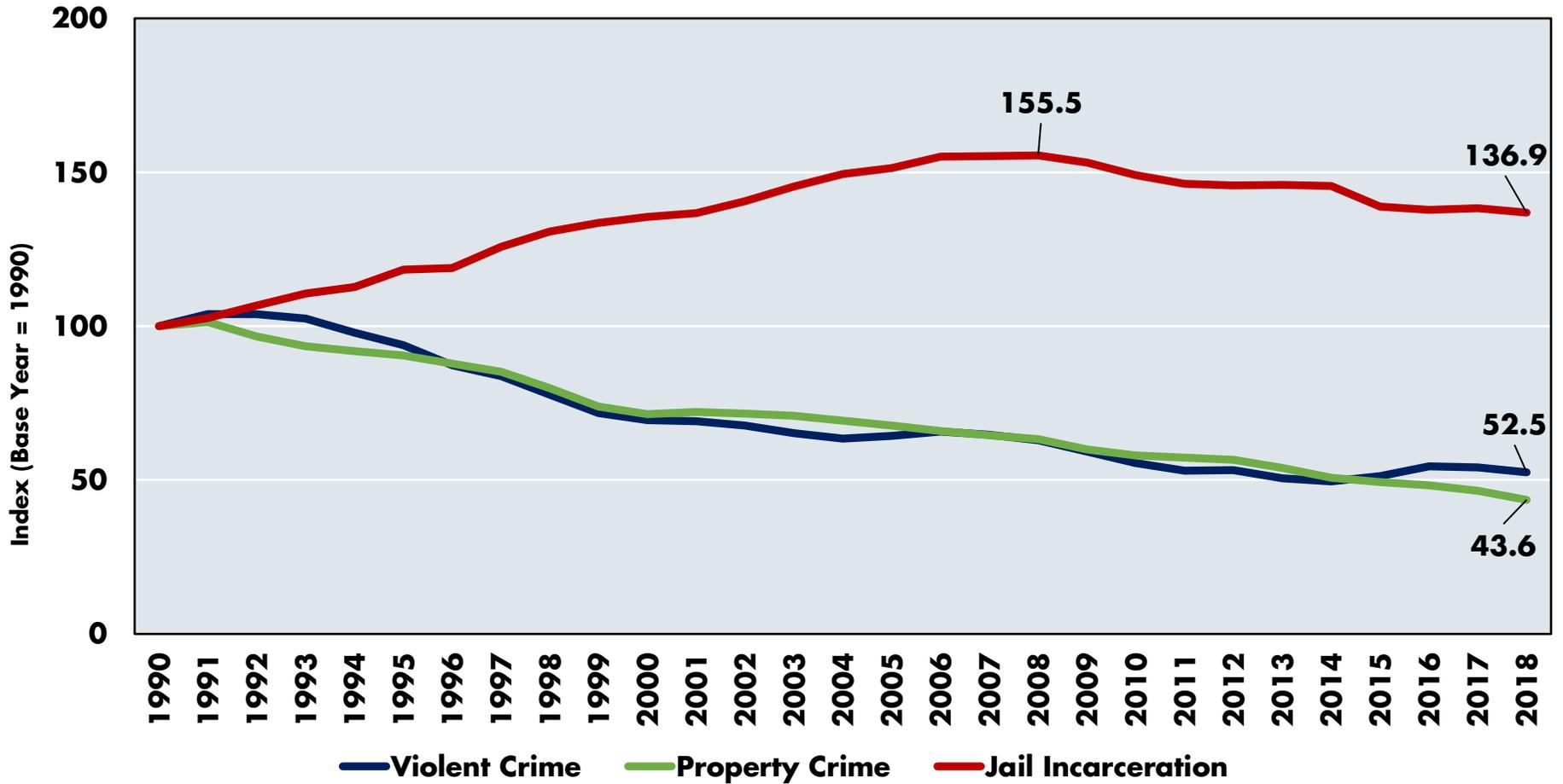
²⁰ Pretrial commitments reflect the number of pretrial commitment events. This is not a count of unique people, as some individuals may be committed multiple times for the same or different offenses, if they were released and then returned to jail. The average daily pretrial population totaled 11,587 in 2019.

²¹ Paul Heaton, Sandra G. Mayson and Megan Stevenson, "The Downstream Consequences of Misdemeanor Pre-trial Detention," *69 Stanford Law Review* 711 (2017).



GRAPH 1

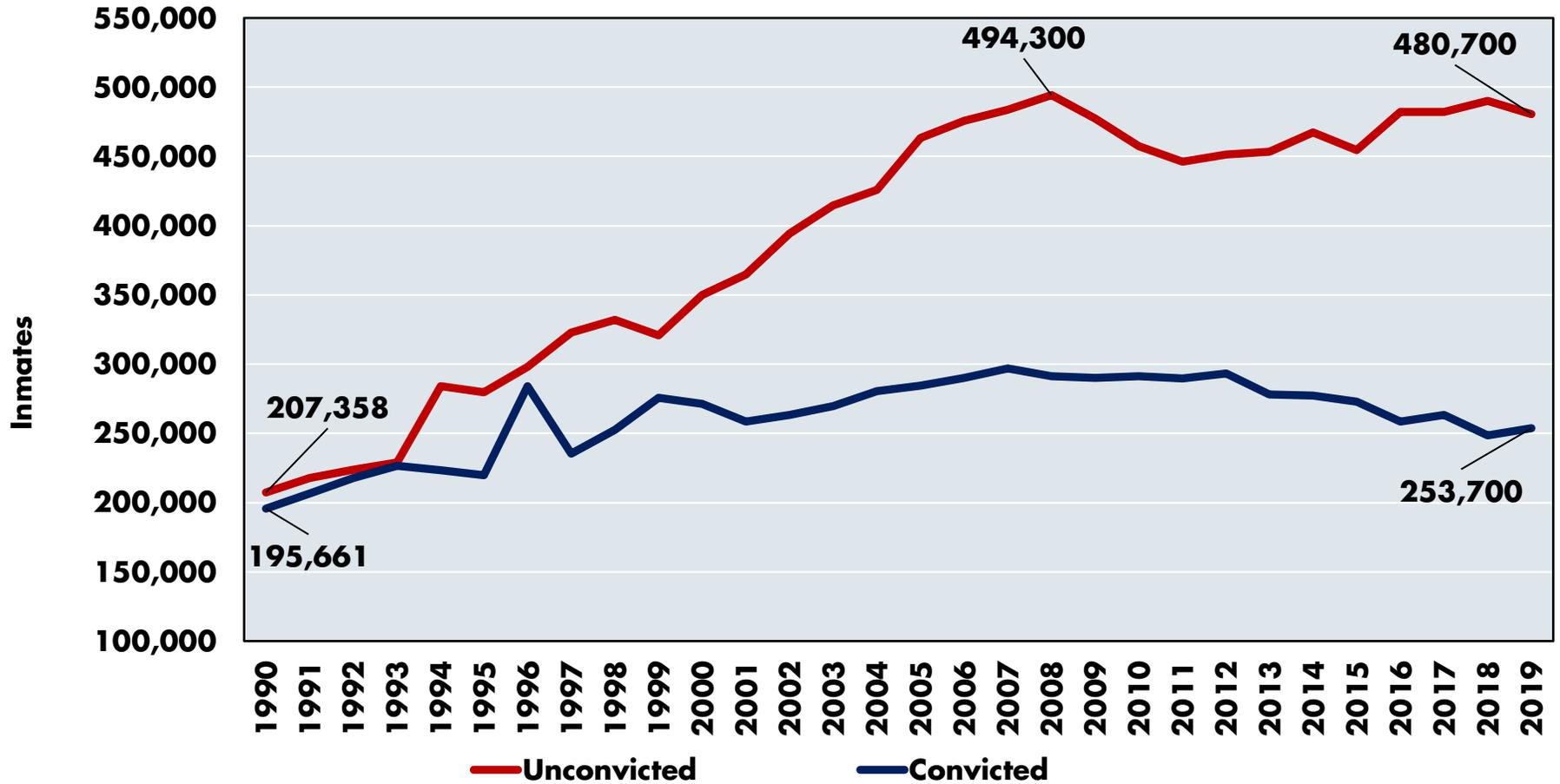
CHANGE IN VIOLENT CRIME, PROPERTY CRIME AND JAIL INCARCERATION RATES:
UNITED STATES, 1990-2018



Sources: Vera, Incarceration Trends (2018), FBI Uniform Crime Reporting (2019) and the Dragas Center for Economic Analysis and Policy, Old Dominion University

GRAPH 2

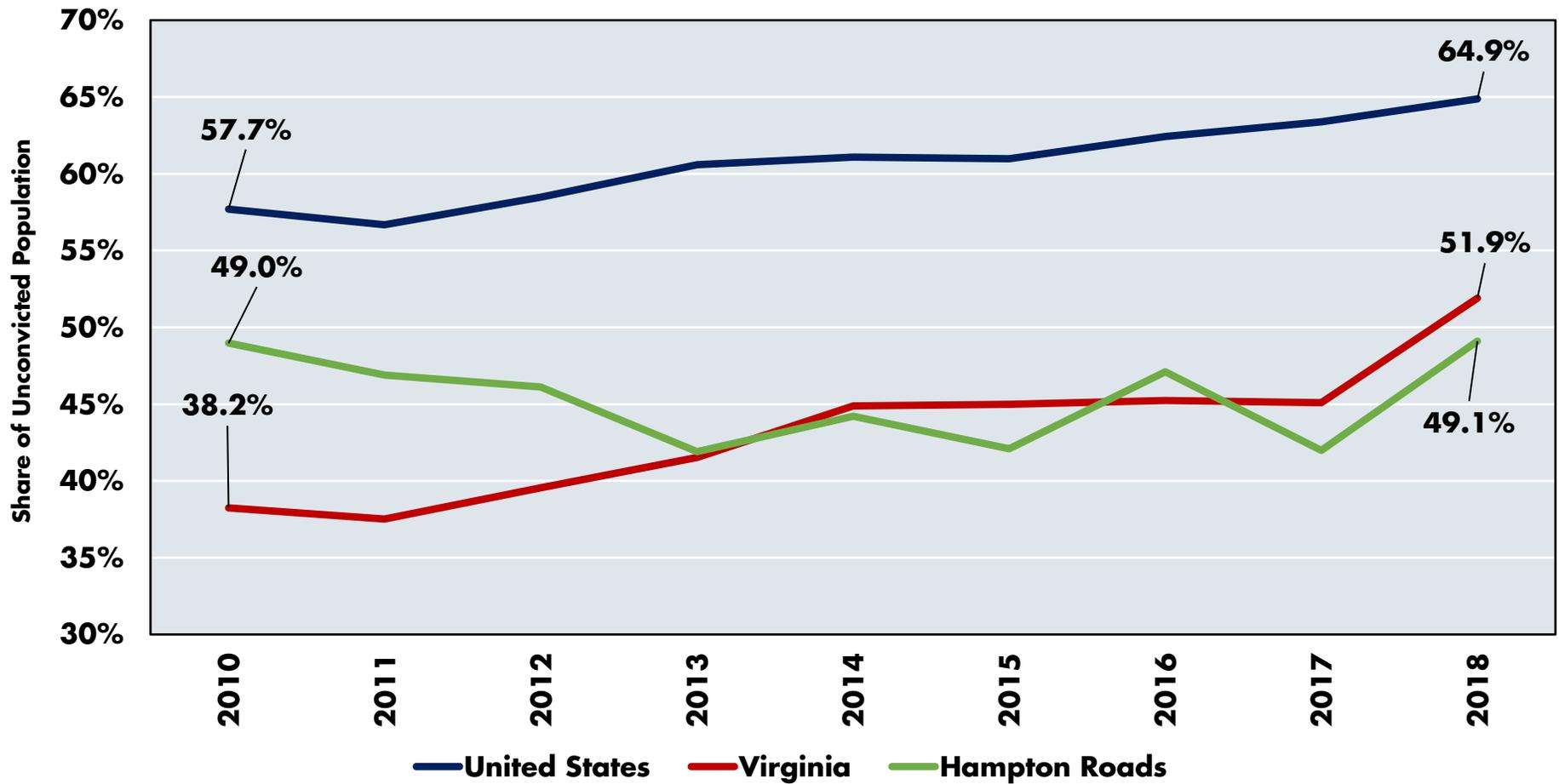
JAIL INMATE POPULATION BY CONVICTION STATUS:
UNITED STATES, 1990-2019



Sources: Bureau of Justice Statistics, Jail Inmates, and the Dragas Center for Economic Analysis and Policy, Old Dominion University. Estimates for population are from either the last weekday in June or Dec. 31.

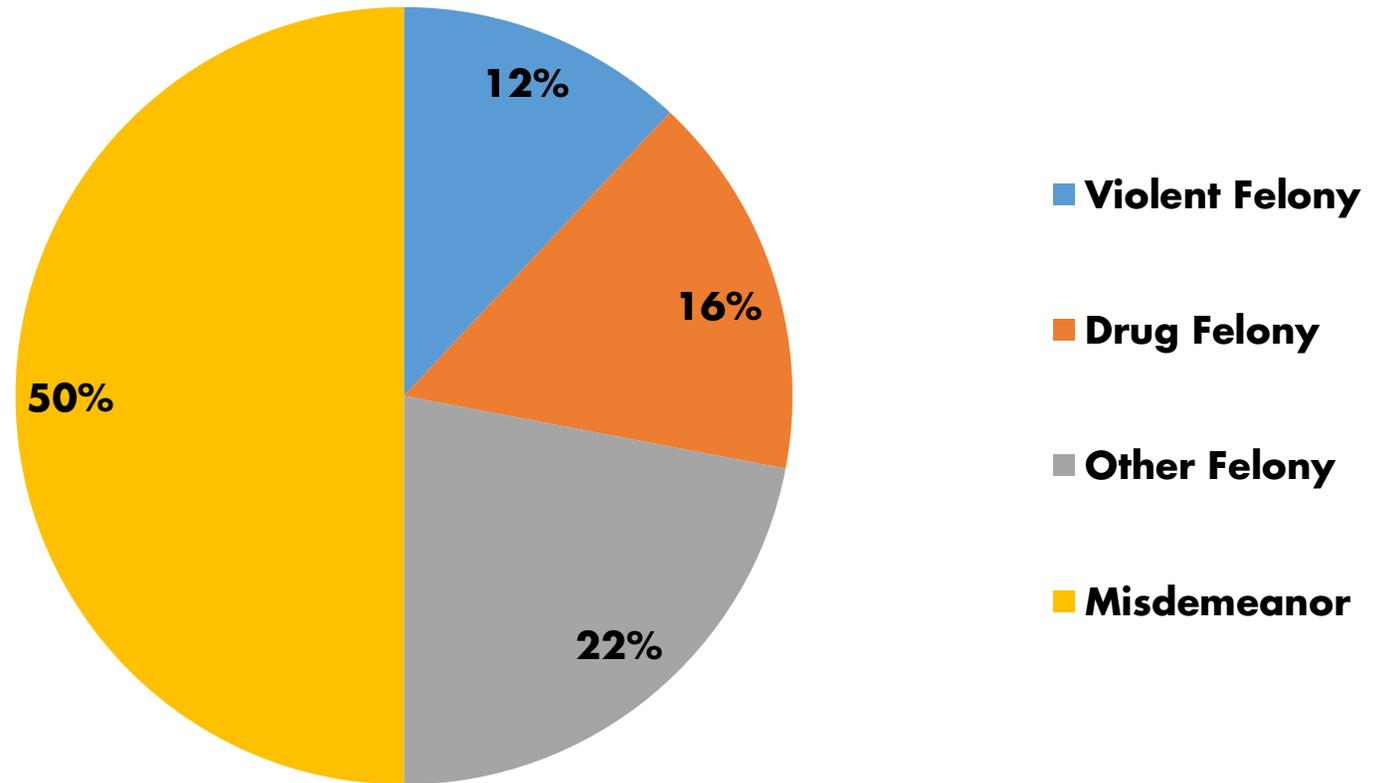
GRAPH 3

SHARE OF UNCONVICTED JAIL INMATE POPULATION:
UNITED STATES, VIRGINIA AND HAMPTON ROADS, 2010-2018



Source: Vera, Incarceration Trends (2018)

GRAPH 4
SHARE OF PRETRIAL COMMITMENTS BY MOST SERIOUS OFFENSE TYPE:
VIRGINIA, 2019



Source: Virginia Department of Criminal Justice Services

The Use Of Cash Bail

Unfortunately, data on pretrial release conditions at the national, state and local level are sparse at best. In a 2009 Bureau of Justice Statistics survey (the latest national data available), of the country's 40 most populous counties, more than 40% of felony defendants were assigned monetary bail conditions, up 11% since 1990. Over the same period, the share of defendants released on recognizance declined 13%. Fortunately for the Commonwealth, a 2021 study by the Virginia State Crime Commission (VSCC) provided insight on the use of different pretrial release mechanisms. We draw on this work in this section.

The Virginia Pre-Trial Data Project (VPDP) tracked a cohort of defendants who were arrested and charged with an offense in October 2017 to the final disposition of their case. The purpose of the project, which will be replicated on an annual basis, was to address the lack of statewide data on bail conditions and pretrial outcomes in Virginia. Graph 5 shows the final pretrial mechanism for the 15,653 defendants in the 2017 VPDP cohort.²²

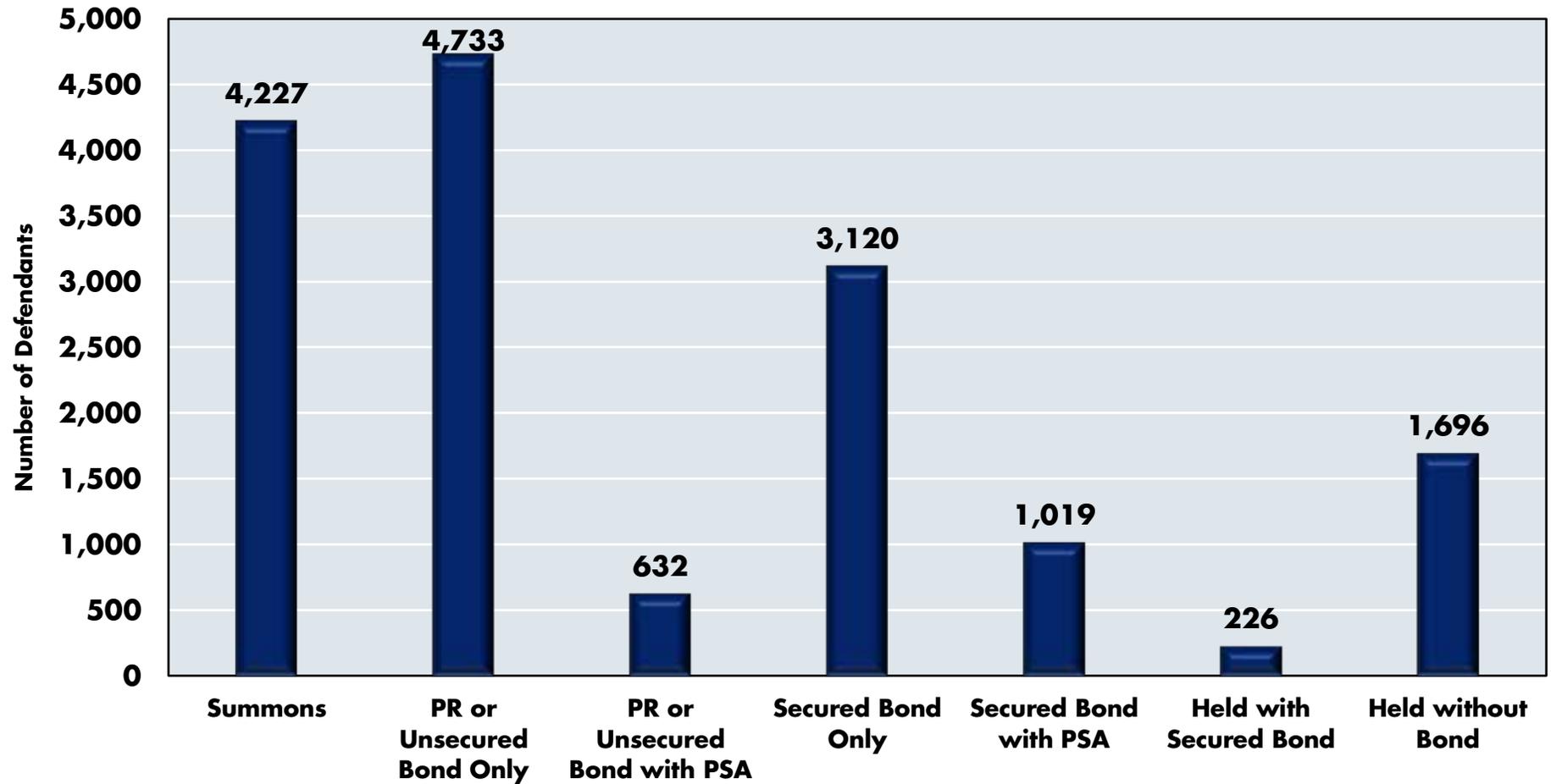
Of these 15,653 defendants, 4,227 received a summons and were released on their own recognizance and 11,426 were taken into custody. Graph 6 shows the final bail type or detainment status for the 11,426 defendants taken into custody. Almost half (47%) were released on personal recognizance or an unsecured bond. Over a third (36%) were released on a secured bond. Almost 15% were denied bail, while 2% of the defendants were held with a secured bond the entire pretrial period. In other words, out of the 11,426 defendants, 226 were unable to scrape together enough resources to secure a bond to obtain release from confinement for the entire pretrial period.



²² The study cohort consisted of 22,933 defendants. Descriptive statistics are available only on the 15,715 defendants whose October 2017 arrest was the result of a new arrest, not related to a prior charge. Sixty-two of these defendants were excluded from the analysis, as the information could not be verified.

GRAPH 5

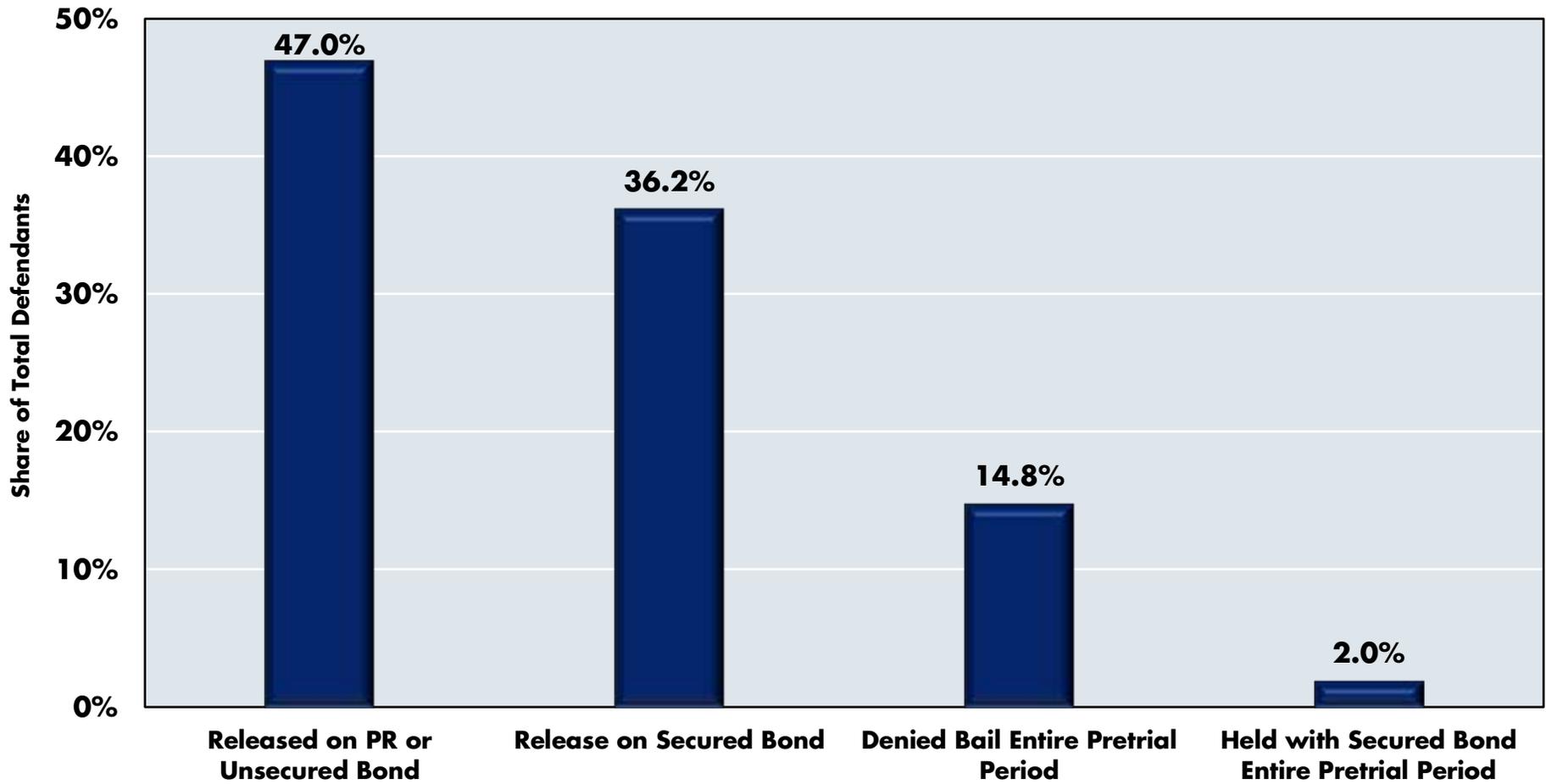
VSCC VIRGINIA PRE-TRIAL DATA PROJECT: STATEWIDE DESCRIPTIVE STATISTICS OF DEFENDANT COHORT,
FINAL PRETRIAL RELEASE MECHANISM AND DETAINMENT STATUS OF DEFENDANT COHORT



Source: Virginia State Crime Commission's Virginia Pre-trial Data Project (2021), statewide descriptive findings. Statistics reflect the outcomes of 15,715 total defendants charged with a new arrest in the study cohort, excluding 62 defendants whose bond type could not be determined. (PR is personal recognizance and PSA is pretrial supervision.)

GRAPH 6

VSCC VIRGINIA PRE-TRIAL DATA PROJECT: STATEWIDE DESCRIPTIVE STATISTICS OF DEFENDANT COHORT,
PERCENT OF TOTAL DEFENDANTS BY PRETRIAL RELEASE MECHANISM AND DETAINMENT STATUS



Source: Virginia State Crime Commission's Virginia Pre-trial Data Project (2021), statewide descriptive findings. Statistics reflect the outcomes of 15,715 total defendants charged with a new arrest in the study cohort, excluding 4,277 defendants released on a summons and 62 defendants whose bond type could not be determined. Released on personal recognizance (PR) or unsecured bond and released on secured bond includes unsupervised release and release with pretrial (PSA) supervision.

Pretrial Release Conditions May Change

Where defendants start in the pretrial release process does not necessarily define where they will end up. A magistrate may hold a defendant without bond or with a secured bond, or determine that a personal-recognizance or unsecured bond is appropriate. However, the decision can be (and often is) revisited, and the bail conditions modified, in due course. Turning again to the VPDP data, we note that of the 15,715 defendants shown in Graphs 5 and 6, 4,227 were released at the time of arrest through the issuance of a summons, and 334 had incomplete data on initial or final bond or release status.

We turn our attention now to the 11,154 defendants whose initial and final status was known (Graph 7). Of the 3,591 defendants who were initially held without bond, 1,696 (47.2%) remained in custody, 1,379 (38.4%) were later released on a secured bond, and 516 (14.4%) were released on personal recognizance or unsecured bond. For the 3,180 held initially on a secured bond, only 226 (7.1%) were not released, 2,665 (83.8%) were released on a secured bond and 289 (9.1%) were released on personal recognizance or unsecured bond. Of the 4,383 defendants held on personal recognizance or unsecured bond, almost all (99.7%) were released under the same conditions.

A majority of defendants (52.8%) who were initially held without bond were later released on bond. For defendants held initially on a secured bond, 92.9% were released on bond at some point. Of the 11,154 defendants in the VPDP sample, 82.7% were released on some type of bond, and the remainder (17.3%) were held without bond until their trial.

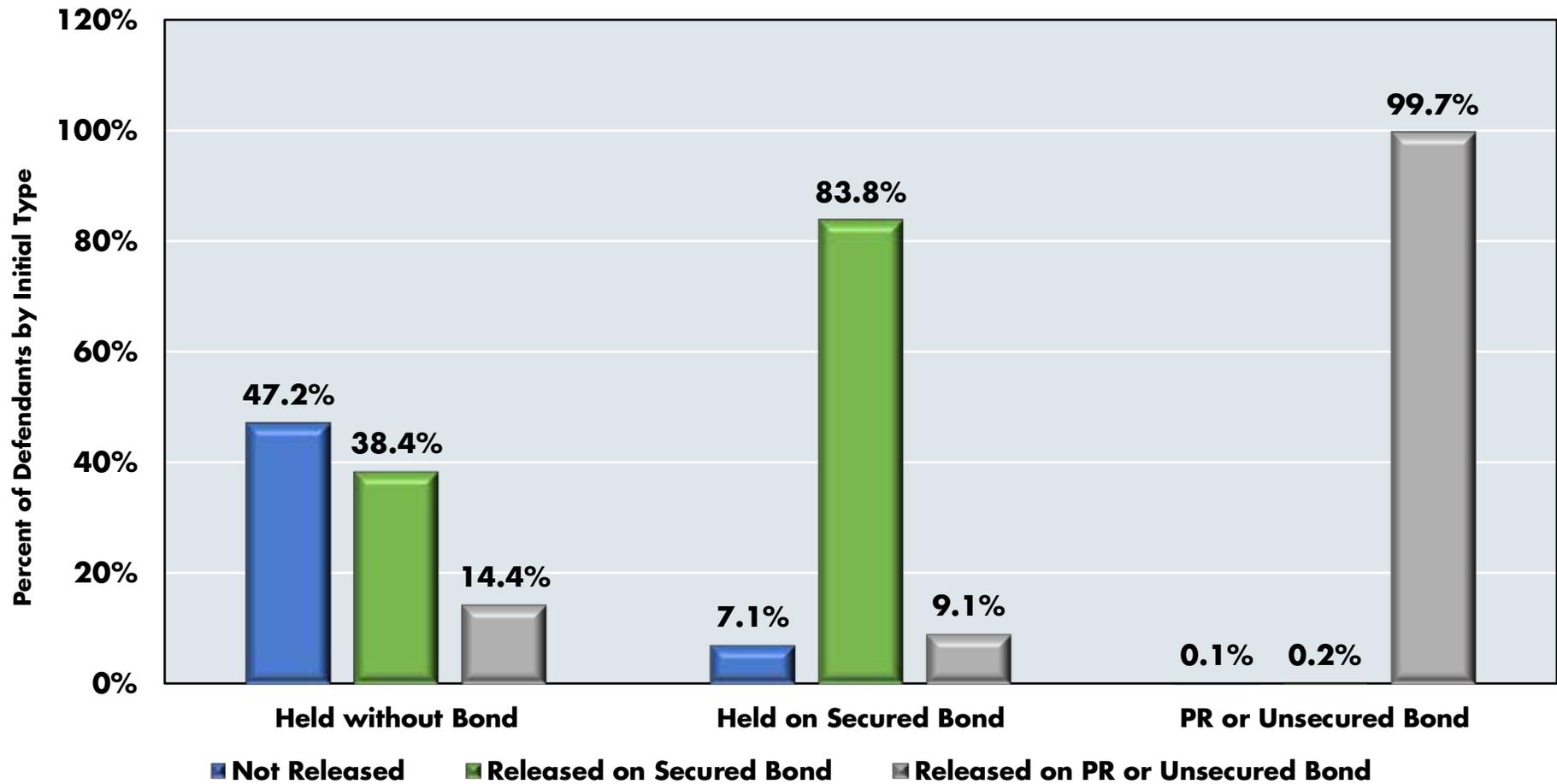
A defendant's charge is one of the most significant factors in deciding bail. The most serious offense for roughly half of the defendants in the cohort was a jailable nonfelony charge. If judges are employing the least restrictive conditions, we should expect those charged with less serious, nonfelony offenses to be more likely to be issued personal recognizance or unsecured bonds. This distribution is illustrated in Graph 8. Among defendants in the cohort charged with a jailable nonfelony, 65% were released on a personal-

recognizance or unsecured bond followed by 27% released on a secured bond. A secured bond was the most common bail type for defendants charged with at least one felony.



GRAPH 7

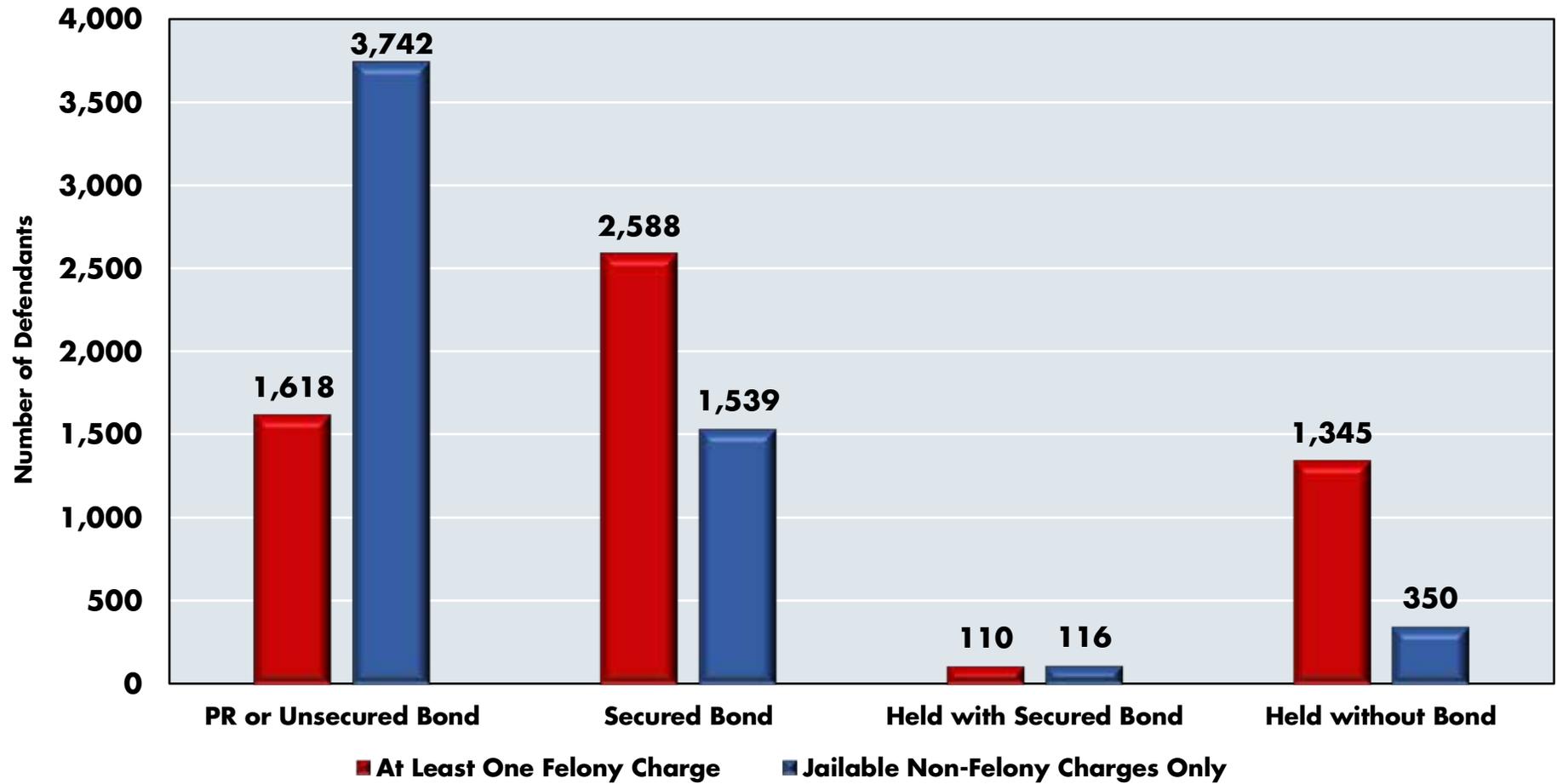
VSCC VIRGINIA PRE-TRIAL DATA PROJECT: STATEWIDE DESCRIPTIVE STATISTICS OF DEFENDANT COHORT, ULTIMATE RELEASE OR DETENTION TYPE BY INITIAL CONDITIONS



Source: Virginia State Crime Commission's Virginia Pre-trial Data Project (2021), statewide descriptive findings for 11,154 defendants. (PR is personal recognizance.)

GRAPH 8

VSCC VIRGINIA PRE-TRIAL DATA PROJECT: STATEWIDE DESCRIPTIVE STATISTICS OF DEFENDANT COHORT,
MOST SERIOUS CHARGE CLASSIFICATION BY ULTIMATE RELEASE OR DETENTION TYPE



Source: Virginia State Crime Commission's Virginia Pre-trial Data Project (2021), statewide descriptive findings, Table 3. Excludes 19 defendants with undetermined charge classification and defendants released on a summons. (PR is personal recognizance.)

How Many Days Does Someone Spend In Jail Pretrial?

Graph 9 shows the number of days in pretrial detention for the 9,406 defendants released on bond.²³ Over 8 in 10 defendants released on personal recognizance or unsecured bond were released on the same day of their arrest. Only 44% released on a secured bond were released on the same day as their arrest. Approximately 4.3% of defendants ultimately released on personal recognizance or unsecured bond remained in jail more than 10 days. For those ultimately released via a secured bond, this climbed to 18.1%.

Recent research has shown that even a day or two of pretrial detention can disrupt employment, housing and child care.²⁴ Approximately 39% of defendants released on a secured bond were detained at least two days, and more than 1 in 4 secured-bond defendants were still in custody six days after the initial arrest. The longer time secured-bond defendants spend in jail, either scraping together the money or appealing for lighter bail conditions, lies at the heart of the cash bail debate.

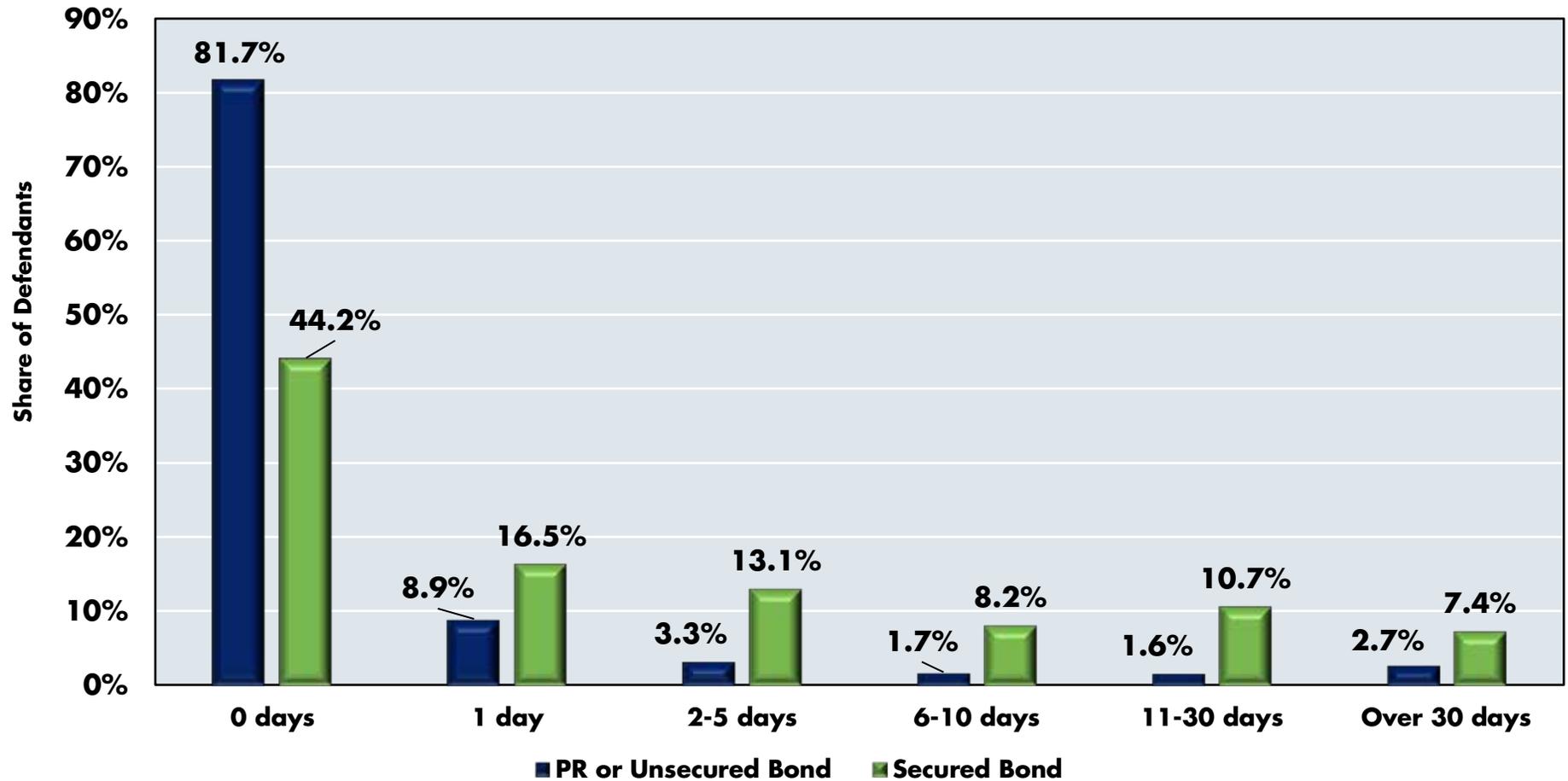


²³ Of the 11,426 defendants in Graphs 5 and 6, 98 had missing information, 1,696 were held without bond and 226 were held the entire period with a secured bond. Removing these defendants from the analysis reduced the sample size to 9,406 defendants.

²⁴ Will Dobbie, Jacob Godin and Crystal S. Yang, "The Effects of Pre-trial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges," 2018, *American Economic Review*, vol. 108, no. 2, available at: <https://pubs.aeaweb.org/doi/pdfplus/10.1257/aer.20161503>.

GRAPH 9

VSCC VIRGINIA PRE-TRIAL DATA PROJECT: STATEWIDE DESCRIPTIVE STATISTICS OF DEFENDANT COHORT
DAYS FROM ARREST TO RELEASE, PERCENTAGE OF TOTAL DEFENDANTS BY BOND TYPE



Source: Virginia State Crime Commission's Virginia Pre-trial Data Project (2021), statewide descriptive findings. Released on personal recognizance (PR) or unsecured bond and released on secured bond includes unsupervised release and release with PSA supervision.

Bond Amounts: Are They Affordable?

While more than 1 in 3 defendants released on a secured bond spent at least two days in jail, the average bond amount was less than \$5,200. As illustrated in Graph 10, the average secured bond amount for nonfelony defendants in the sample was \$2,928 and \$5,182 for felony defendants. Bond amounts ranged from \$100 to \$200,000. Among defendants issued a secured bond, the average bond amount for those held the entire pretrial period was lower than for released defendants. This suggests that detention for the entire period was, in part, a function of income rather than risk to the community or the likelihood to appear in court.

A defendant issued a secured bond has two main options to post bond: pay the entire bond amount in cash or use a solvent surety such as a family member, friend or bail bondsman. Defendants with the financial means to post the bond outright are fully refunded at the end of their case. Defendants without sufficient means could use a bail bondsman, but they must pay a nonrefundable fee ranging from 10% to 15%. Among the defendants in the cohort released on secured bond, 89% used a bail bondsman to post bond. The widespread use of bail bondsmen could be the result of the lower incomes of defendants and incarcerated people in general, the relative unaffordability of bonds or maybe even the low savings rate of average Americans.

Given the relationship between crime and socioeconomic status, we would expect, on average, incarcerated individuals to have lower average incomes relative to the population. A Prison Policy Initiative (PPI) report in 2015 found that inmates prior to incarceration had a median annual income of \$19,185 in 2014 dollars, 41% less than the nonincarcerated population in a similar age group.²⁵ The statistics from the Virginia Pre-trial Data Project do not provide us with income information for defendants. However, as a proxy for income, the data show that roughly half of all defendants in the sample were represented by a public defender or court-appointed attorney. The presence of a public defender was highest among defendants held on a secured bond the entire

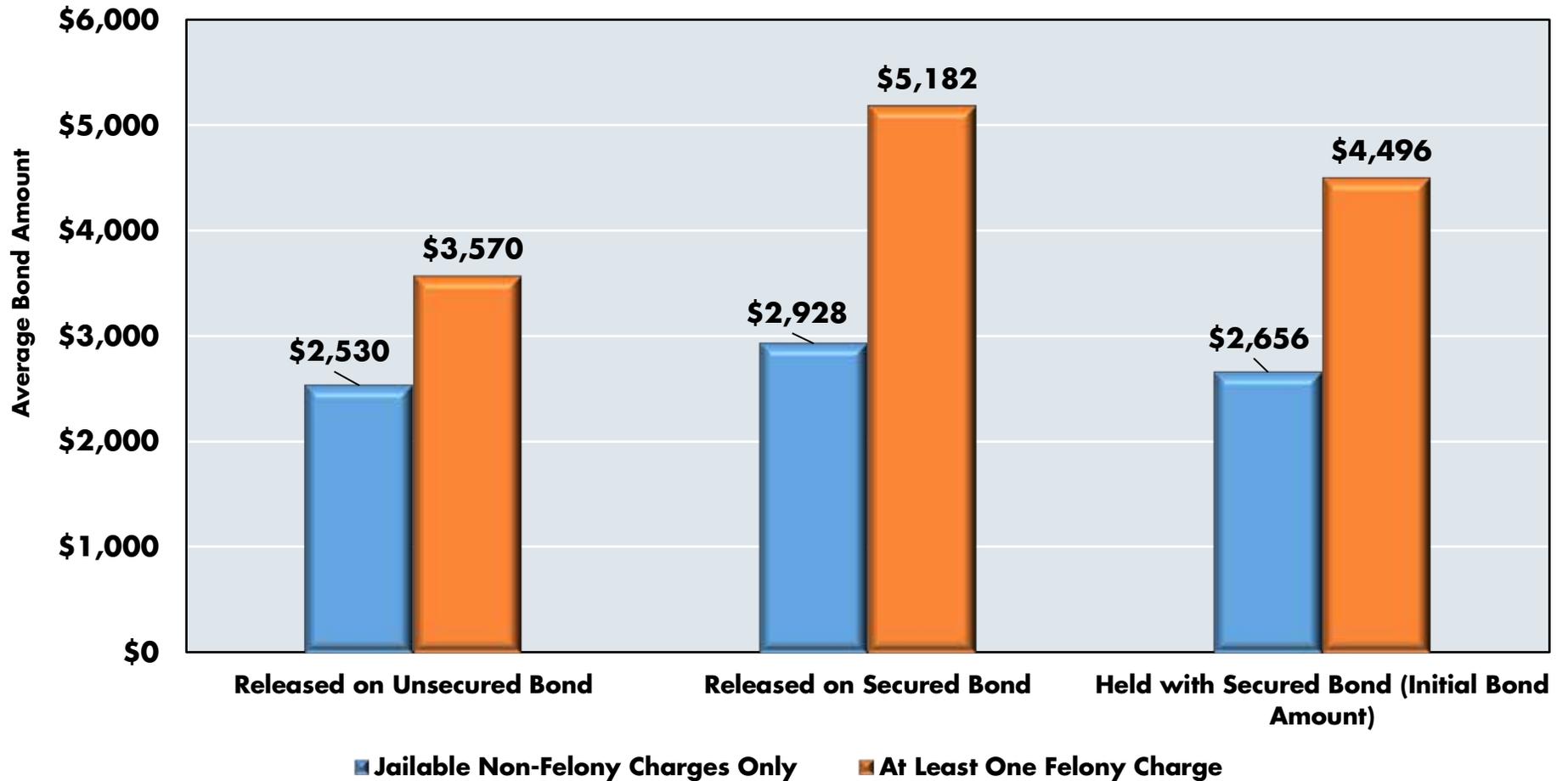
pretrial period (83.2%), followed by defendants released on secured bonds (61.8%) and personal recognizance or unsecured bond (50.5%).



²⁵ "Prisons of Poverty: Uncovering the pre-incarceration incomes of the imprisoned," Prison Policy Initiative, 2015, <https://www.prisonpolicy.org/reports/income.html>.

GRAPH 10

VSCC VIRGINIA PRE-TRIAL DATA PROJECT: STATEWIDE DESCRIPTIVE STATISTICS OF DEFENDANT COHORT
AVERAGE BOND AMOUNT BY ULTIMATE BOND TYPE AND OFFENSE CLASSIFICATION



Source: Virginia State Crime Commission's Virginia Pre-trial Data Project (2021), statewide descriptive findings, Table 6. Average bond amounts for defendants released with and without a pretrial service agency. Does not include 235 defendants who were released on a personal recognizance bond only.

Failure To Appear Or Flight Risk?

Failure to appear is one of the more contentious issues surrounding the cash bail reform debate. After cash bail reform in Harris County, Texas, 43% of defendants who were released without cash bail failed to appear for court between June and December 2017. In 2018, prosecutors in Atlanta claimed that bail reform *doubled* the rate of people failing to appear in court.²⁶

One problem is that the definition of failure to appear differs from state to state, if not jurisdiction to jurisdiction. If a person misses 10 court appointments, is this counted once or 10 times? The answer depends on local rules and preferences. Failure to appear, however, is not just a problem in the justice system. Estimates suggest that Americans, on average, fail to keep medical appointments between 15% and 30% of the time.²⁷

Is cash bail meant to encourage court appearance or reduce flight risk? This is an important question. Court appearance rates may suffer because defendants cannot take time off work, are indigent, lack transportation or have health care issues. Accommodating the needs of these defendants is in the interests of the defendant, the justice system and taxpayers. Incarcerating a low-risk defendant because of a missed court appointment is akin to having your car repossessed because you missed an appointment at the car dealership.

Flight risk, however, is an attempt to evade justice. These defendants typically need resources to flee. Flight risk is likely to be positively correlated with income. Monitoring these individuals is expensive and time-consuming, and thus identifying who is a flight risk is important. Indiscriminately using cash bail to prevent flight risk is likely to produce the unintended consequence of increasing the pretrial detention rates of lower-income defendants. Available evidence suggests that likelihood of flight risk is low, especially when compared to the frequency of nonappearance.²⁸

²⁶ <https://theappeal.org/the-failure-to-appear-fallacy/>.

²⁷ <https://pubmed.ncbi.nlm.nih.gov/7010402/>.

²⁸ Lauryn P. Gouldin, "Defining flight risk," *The University of Chicago Law Review*, vol. 85 (2018).

A Bureau of Justice Statistics (BJS) report sheds light on the difference between nonappearance and flight risk (or remaining a fugitive from justice). Surveying 40 of the 75 largest U.S. counties between 1990 and 2004, the BJS found that approximately 75% of defendants appeared in court on schedule. Of those defendants that missed at least one court hearing (failing to appear), 94% appeared in court within a year of their missed court date. Only 6% remained fugitives from justice. This study suggests that the actual risk of flight is significantly overstated by the use of failure to appear statistics.²⁹

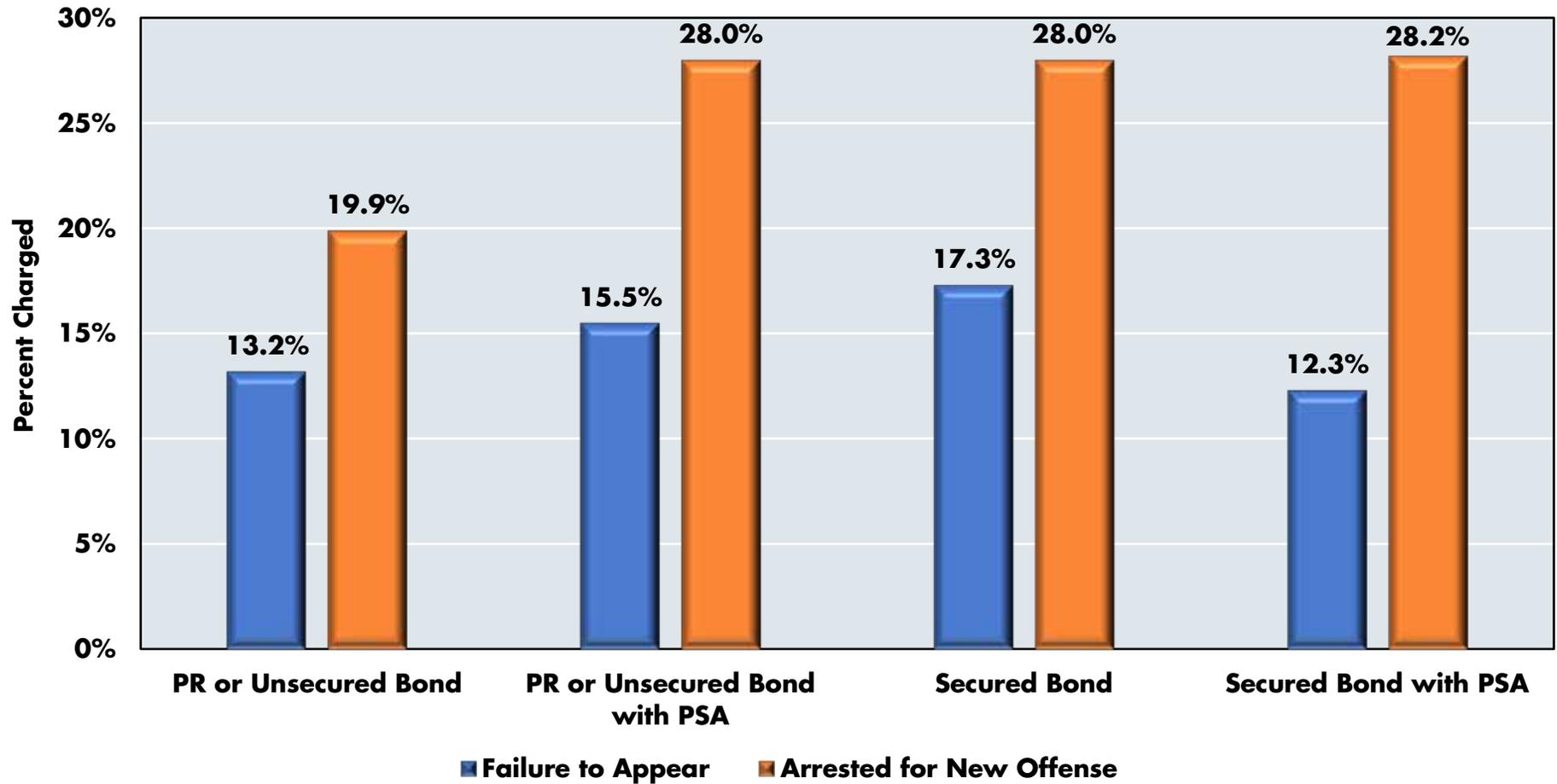
Graph 11 presents data from the Virginia Pre-Trial Data Project regarding whether defendants were charged with failure to appear or were arrested for a new in-state offense punishable by incarceration. On average, 13% of defendants were charged with failure to appear, with the highest rates of charges being observed among those released with a secured bond only. However, the more relevant question is whether those released committed new crimes at different rates. Approximately 1 in 5 defendants released on personal recognizance or an unsecured bond were charged with a new in-state offense that was punishable by incarceration. Among those released on more stringent types of bonds and supervision, almost 3 in 10 were arrested for a new in-state jailable offense. The argument that changing bail conditions would result in increases in criminal activity appears to be undermined by the data, which suggest that defendants released under some form of supervision were arrested at approximately the same rate.

From our perspective, cash bail reform would increase the number of defendants who miss court appointments. One way to address this potential problem is to divert some portion of savings from incarcerating low-risk defendants to helping these defendants keep (or reschedule) their court appearances. Developing tools and support systems to reduce the administrative burden on these defendants and the courts would be a boon to taxpayers also. Courts could then more keenly focus on those defendants who pose risks to public safety or who may flee justice.

²⁹ <https://www.bjs.gov/content/pub/pdf/prfdsc.pdf>.

GRAPH 11

VSCC VIRGINIA PRE-TRIAL DATA PROJECT,
PERCENT OF DEFENDANTS CHARGED WITH FAILURE TO APPEAR OR ARRESTED FOR NEW OFFENSE



Source: Virginia State Crime Commission's Virginia Pre-trial Data Project (2021), statewide descriptive findings. (PR is personal recognizance and PSA is pretrial supervision.)

Cash Bail In Hampton Roads

From 1990 to 2018, violent crimes and property crimes in Hampton Roads declined by 39.5% and 58.4%, respectively (Graph 12). Over the same period, the incarceration rate increased 80.3%, well above the national average of 36.9%. In 2018, an average of 425 inmates per 100,000 Hampton Roads residents were in local jails, almost twice the national average of 226 per 100,000 Americans. On any given day in 2018, an average of 209 pretrial inmates per 100,000 Hampton Roads residents were in local jails, a higher rate than that for Virginia (186.5 per 100,000) and the nation (146.2 per 100,000) (Graph 13).

Unfortunately, there are not enough reliable data to examine the use of cash bail at the local level. We can, however, examine the role of pretrial detention within Hampton Roads to better understand the potential impact of cash bail reform. To examine pretrial detention at the local level, we must first discuss Virginia's system of local and regional jails. Responsibilities are spread across state and local agencies. While localities provide a majority of the funding for jails, the state's share is not insignificant, accounting for roughly 40% of total funding for jails in the eastern region in 2019.³⁰ Not all localities have their own jail, opting to use a regional jail. Other cities and counties have their own jail but also use a regional jail to house inmates.

Table 1 lists the local and regional jails in Hampton Roads and the corresponding localities that house inmates at each jail in 2019. Of the 16 cities and counties in the region, eight have their own local jail. For the most part, the distribution of inmates across jails was representative of the corresponding localities' shares of the region's total population. Virginia Beach City Jail (20.5%) and Norfolk City Jail (14.7%) housed the largest shares of Hampton Roads jail inmates.

³⁰ Virginia State Compensation Board, Jail Cost Report (2019). The eastern region includes Hampton Roads local and regional jails (Table 1) as well as Northampton, Sussex and Accomack county jails and Southside Regional Jail.

In April 2021, the Virginia Board of Local and Regional Jails issued a recommendation to close Hampton Roads Regional Jail. The decision followed the deaths of at least 22 inmates since 2015 and a 2016 U.S. Department of Justice (DOJ) investigation of the jail. The DOJ found the jail's inadequate medical care and mental health care, and overuse of solitary confinement violated the prisoners' constitutional rights.

The primary purpose of local and regional jails is to house pretrial defendants, those with a misdemeanor sentence, felony sentence of 12 months or less, or local ordinance violation. These inmates accounted for 71% of the total Hampton Roads jail population in 2019. Federal prisoners and state-responsible inmates comprise the other 29%; they are usually awaiting transfer to a prison or other state facility. On a typical day in 2019, approximately 6,713 inmates were incarcerated in Hampton Roads local and regional jails, 47% of whom had not yet been convicted of a crime.

As illustrated in Graph 14, the pretrial inmate population in the region's local jails ranged from 30.6% in Southampton County Jail to 59.7% in Newport News City Jail. It also appears that city jails have higher shares of pretrial inmates relative to county or regional jails. There are several factors, such as different rates in arrest or criminal activity across jurisdictions or differences in the use of secured bonds, that could influence the share of pretrial inmates. The mixing of inmates from multiple jurisdictions, however, makes it difficult to say much about the differences in pretrial practices across localities in the region.

To examine pretrial detention at the county level, we can look at jurisdiction-level jail data from the Vera Institute of Justice. On an average day in 2018, there were approximately 209 pretrial detainees for every 100,000 residents in the region (Table 2). The highest rate of pretrial detention in 2018 was in Portsmouth (768.2), followed by Mathews County (308.0) and Norfolk (259.8). From 2000 to 2018, the pretrial detention rate rose the fastest in James City County, increasing at an average annual rate of 5%. For the

majority of the region's counties, the annual growth rate of pretrial detainees from 2000 to 2018 averaged above 3%, while in several of the region's largest cities, pretrial detention declined over the same period.

TABLE 1

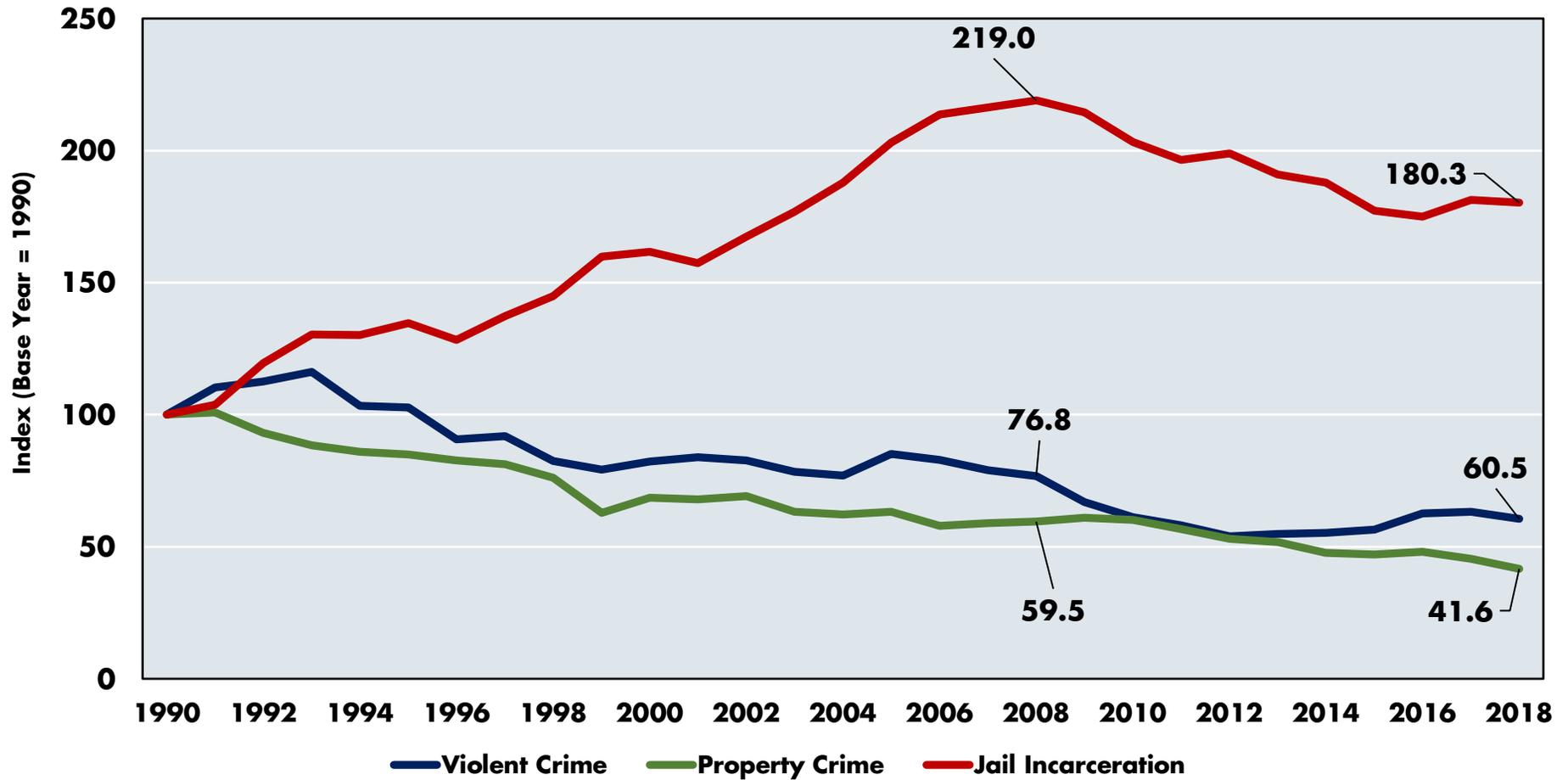
HAMPTON ROADS LOCAL AND REGIONAL JAILS, 2019

Jail Name	Jail Member Jurisdiction	Jail Share of Hampton Roads Inmate Population	Jurisdiction Share of Hampton Roads Resident Population
Chesapeake City	Chesapeake	14.0%	14.2%
Gloucester County	Gloucester County	0.6%	2.2%
Hampton City	Hampton	4.1%	7.8%
Newport News City	Newport News	7.0%	10.4%
Norfolk City	Norfolk	14.7%	14.1%
Portsmouth City	Portsmouth	3.6%	5.5%
Southampton County	Southampton County	1.1%	1.0%
Virginia Beach City	Virginia Beach	20.5%	26.2%
Hampton Roads Regional*	Chesapeake, Hampton, Newport News, Norfolk, Portsmouth	14.3%	52.1%
Middle Peninsula Regional	Mathews County	2.4%	0.5%
Virginia Peninsula Regional	James City County, Williamsburg, Poquoson, York County	6.4%	10.0%
Western Tidewater Regional	Suffolk, Franklin, Isle of Wight County	11.3%	8.0%

Sources: Virginia State Compensation Board, Local Inmate Data Systems, and the U.S. Census Bureau Intercensal Population Estimates, 2019. *As of April 2021, Chesapeake, Norfolk and Portsmouth had pulled their inmates out of the Hampton Roads Regional Jail.

GRAPH 12

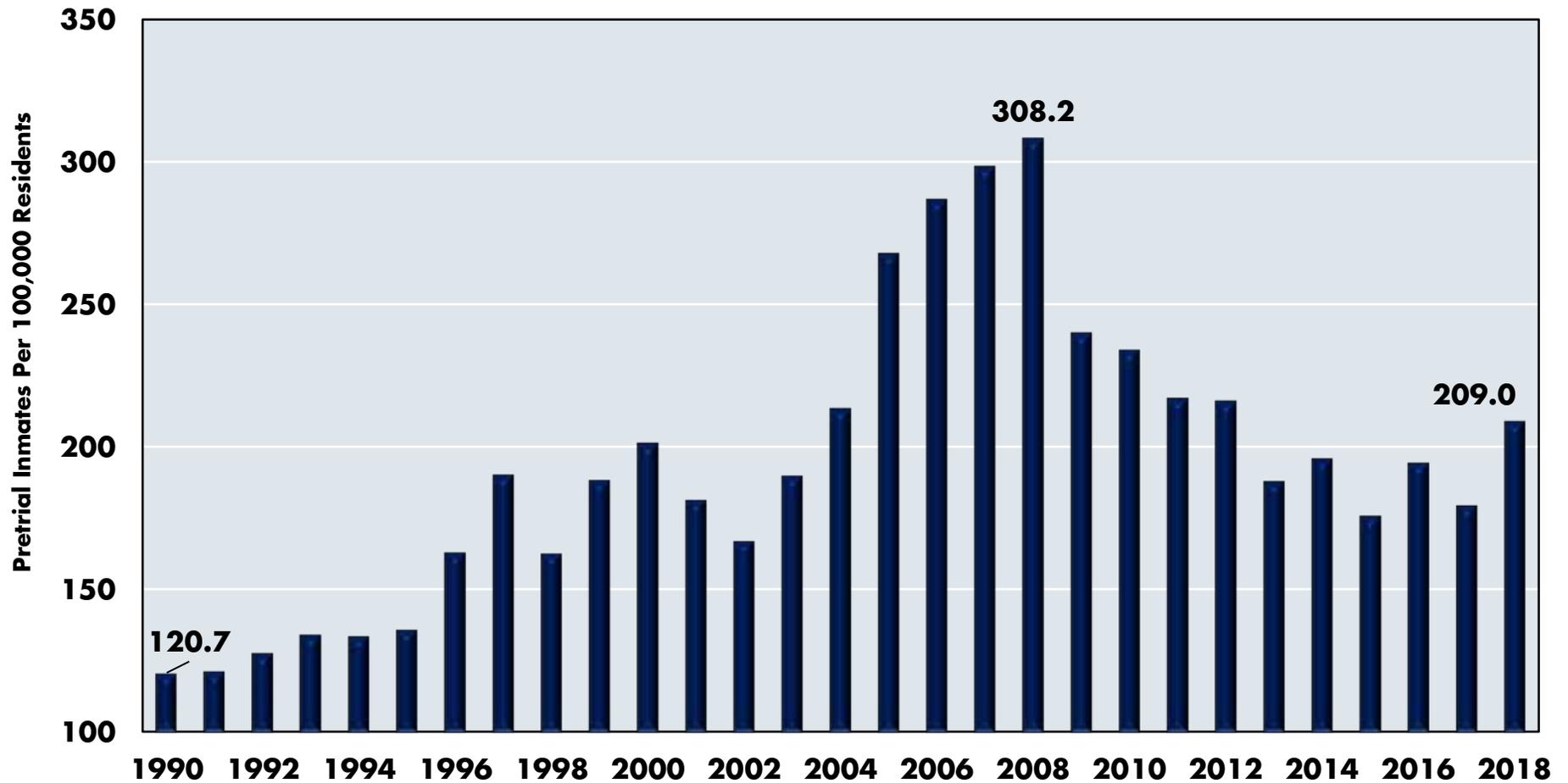
GROWTH IN VIOLENT CRIME, PROPERTY CRIME AND JAIL INCARCERATION RATE:
HAMPTON ROADS, 1990-2018



Sources: Vera Institute of Justice, Incarceration Trends (2018), FBI Uniform Crime Reporting (2019) and the Dragas Center for Economic Analysis and Policy, Old Dominion University

GRAPH 13

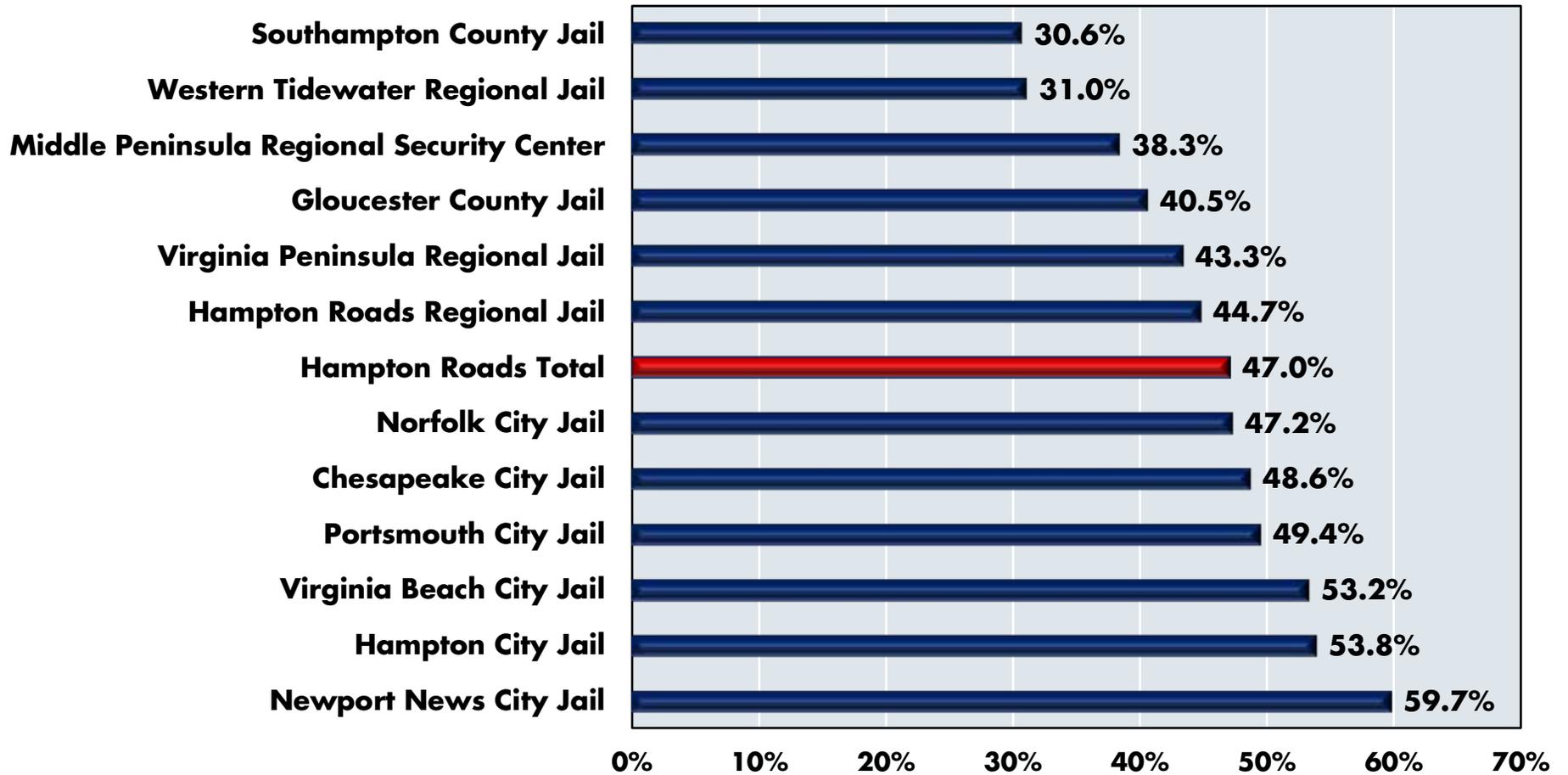
PRETRIAL INMATE POPULATION PER 100,000 RESIDENTS:
HAMPTON ROADS, 1990-2018



Sources: Vera Institute of Justice, Incarceration Trends (2018), FBI Uniform Crime Reporting (2019) and the Dragas Center for Economic Analysis and Policy, Old Dominion University

GRAPH 14

SHARE OF PRETRIAL INMATE POPULATION:
HAMPTON ROADS LOCAL AND REGIONAL JAILS, 2019



Source: Virginia State Compensation Board, Local Inmate Data Systems

TABLE 2

**AVERAGE ANNUAL GROWTH IN PRETRIAL INMATE POPULATION:
HAMPTON ROADS CITIES AND COUNTIES, 2000-2018**

	2000 Pretrial Population Rate Per 100,000 Residents	2018 Pretrial Population Rate Per 100,000 Residents	Average Annual Growth Rate
Chesapeake	137.8	220.1	3.7%
Gloucester County	93.9	155.3	3.2%
Hampton	167.1	149.7	-1.1%
Isle of Wight County	157.8	82.6	-2.4%
James City County	94.9	146.1	5.0%
Mathews County	127.5	308.0	4.8%
Newport News	194.7	172.4	-0.7%
Norfolk	294.9	259.8	-0.5%
Poquoson	99.5	157.0	2.9%
Portsmouth	541.2	768.2	1.6%
Suffolk	154.1	84.6	-1.4%
Virginia Beach	165.8	148.4	-0.3%
Williamsburg	119.6	185.7	3.7%
York County	99.9	161.5	3.7%
Hampton Roads Total	201.4	209.0	1.6%

Sources: Vera Institute of Justice (2020) and Incarceration Trends Dataset, county- and jurisdiction-level jail data (1970-2018). Data for Franklin and Southampton County were not available. Average annual growth represents the compound annual growth rate.

Cash Bail Reform: What Would It Look Like?

Cash bail reform can take many forms. As of April 2021, no state had implemented legislation to completely strip judges of the ability to issue secured bonds. Illinois passed legislation to this effect in 2021, but the reform will not go into effect until 2023. Other states have imposed restrictions on a judge's ability to rely on secured bonds. These restrictions include amending court rules to set forth a presumption in favor of release on the least restrictive conditions, requiring judges to consider a defendant's ability to pay, and expanding the types of offenses eligible for citations or summons. While Virginia already instructs judges to consider the financial means of the defendant, Attorney General Mark Herring and the Virginia Department of Criminal Justice Services have both recommended expanding the use of citations and adding a presumption favoring the least restrictive conditions as possible reforms to reduce the reliance on cash bail.

New Jersey, for example, enacted similar legislation, largely eliminating cash bail in 2017. In the year following implementation, less than 1% of Criminal Justice Reform-eligible defendants³¹ were issued monetary bail, and 71% of defendants were issued a summons with or without pretrial monitoring, without first going to jail.³² New York eliminated cash bail for offenses covering 90% of total arrests in January 2020 but has since expanded the number of offenses eligible for cash bail after the New York Police Department reported an increase in criminal activity. Besides putting limits on judicial decision-making, another key aspect of recent legislative reforms to end cash bail is the statewide implementation of a pretrial risk assessment tool and pretrial services. Both reform tools are already in place in more than two-thirds of Virginia's cities and counties.

31 A Criminal Justice Reform-eligible defendant is defined in statute as "a person for whom a complaint-warrant is issued for an initial charge involving an indictable offense or disorderly persons offense."

32 2018 Report to the Governor and the Legislature, New Jersey Judiciary, submitted by Glenn A. Grant, acting administrative director of the courts, available at: <https://www.njcourts.gov/courts/assets/criminal/2018cjannual.pdf>.

Cash Bail Reform: What Are The Projected Benefits?

The potential benefits of cash bail reform are alluring. Proponents argue there is minimal risk to public safety or court appearance and that eliminating cash bail would lower costs for poor and minority defendants and taxpayers. Cities and counties in Hampton Roads spend an average of \$90.32 per day to house one inmate. On any given day in 2019, 3,154 inmates were detained pretrial in the region, an estimated cost to taxpayers of more than \$104 million per year, or about 45% of the \$233 million spent on corrections and detentions in the region.³³

Advocates point to the potential cost savings of a risk-based system as a key benefit to reform. Herring noted, "It costs about \$3 a day to keep someone on pretrial services, versus about \$85 per day if they are jailed, so if we make smart reforms, we could be talking about millions in savings while still meeting our public safety goals." Yet, with the preponderance of defendants released within 48 hours of arrest, the question is how much money could cash bail reform actually save?

The key question in the cash bail reform debate, we argue, is by how much would the pretrial population in Hampton Roads decline on a daily basis? When New Jersey reformed its cash bail system, the pretrial population declined by 19% in the first year of implementation.³⁴ Assuming a similar impact of a 20% decline in Hampton Roads would reduce the average daily pretrial population by about 630 inmates. This daily decline in the pretrial population would save approximately \$57,000 a day, or approximately \$20 million a year (Table 3). Given that cash bail reform could take a number of forms, we provide a range of estimates in Table 3.

One might argue that \$20 million of savings a year from cash bail reform is not worth the increased risk to public safety. On the other hand, if the daily pretrial population were reduced by 630 inmates, there would be benefits

33 Virginia State Compensation Board, Local Inmate Data Systems and Virginia State Compensation Board, FY 2019 Jail Cost Report. Annual estimate = average daily population X cost of inmate per day X 365.

34 2018 Report to Governor and the Legislature, New Jersey Judiciary. <https://njcourts.gov/courts/assets/criminal/2018cjannual.pdf#c=taP>.

in terms of alleviating crowding in local jails and conserving public safety resources. There are also the direct benefits to people who are not jailed. Every

day in confinement is a potential day of lost wages for those who have not yet been convicted of a crime.

TABLE 3
HAMPTON ROADS LOCAL AND REGIONAL JAILS:
PRETRIAL DETENTION AND TOTAL EXPENDITURES PER DAY AND ESTIMATED COST SAVINGS PER YEAR, 2019

Jail Name	Total Expenditures Per Inmate Per Day	Average Daily Pretrial Population	Total Pretrial Expenditures Per Year	Savings Per Year from 5% Decline in Pretrial Population	Savings Per Year from 10% Decline in Pretrial Population	Savings Per Year from 20% Decline in Pretrial Population
Chesapeake City	\$90.80	458	\$15,179,036	\$758,952	\$1,517,904	\$3,035,807
Gloucester County	\$141.06	15	\$772,304	\$38,615	\$77,230	\$154,461
Hampton City	\$91.92	149	\$4,999,069	\$249,953	\$499,907	\$999,814
Newport News City	\$78.81	280	\$8,054,382	\$402,719	\$805,438	\$1,610,876
Norfolk City	\$68.09	466	\$11,581,428	\$579,071	\$1,158,143	\$2,316,286
Portsmouth City	\$119.71	120	\$5,243,298	\$262,165	\$524,330	\$1,048,660
Southampton County	\$119.50	22	\$959,585	\$47,979	\$95,959	\$191,917
Virginia Beach City	\$80.76	731	\$21,547,979	\$1,077,399	\$2,154,798	\$4,309,596
Virginia Peninsula Regional	\$58.14	186	\$3,947,125	\$197,356	\$394,712	\$789,425
Western Tidewater Regional	\$56.73	235	\$4,866,016	\$243,301	\$486,602	\$973,203
Hampton Roads Regional	\$94.79	428	\$14,808,094	\$740,405	\$1,480,809	\$2,961,619
Middle Peninsula Regional Security Center	\$83.92	62	\$1,899,110	\$94,955	\$189,911	\$379,822
Hampton Roads Total	\$90.35	3,154	\$104,011,824	\$5,200,591	\$10,401,182	\$20,802,365

Sources: Virginia State Compensation Board, Local Inmate Data Systems and the Virginia State Compensation Board, FY 2019 Jail Cost Report. Total expenditures per inmate per day represent operating expenditures minus capital account-operating and other jail indirect expenditures.

In Table 4, we model the economic impact on Hampton Roads if cash bail reform were enacted and the daily pretrial population declined by 630 inmates. To examine the potential (maximum) gains from this policy change, we assume that the defendants are employed in retail trade and estimate the annual economic impact of adding these jobs to the regional economy. We find that the potential gain to regional gross domestic product approaches \$51 million annually, and that more than 880 jobs in total would be added to Hampton Roads. Of course, these benefits might also be reduced if reform were to result in increased criminal activity. However, we note (again) that data from the Virginia State Crime Commission support the conclusion that defendants on more stringent types of release (secured bonds, secured bonds with supervision) were arrested at the same rate as those released on personal recognizance or unsecured bond with supervision. In other words, criminals who are going to commit crimes are going to do so, regardless of how they obtain release from pretrial detention.

TABLE 4

PROJECTED ECONOMIC IMPACT: EMPLOYMENT GAIN OF 630 INDIVIDUALS, HAMPTON ROADS

	Direct	Indirect	Induced	Total
Employment	630	129	124	883
Value Added (Millions)	\$29.3	\$10.8	\$10.8	\$50.9
Compensation (Millions)	\$18.9	\$7.1	\$5.3	\$31.4

Sources: Dragas Center for Economic Analysis and Policy, Old Dominion University, and IMPLAN Group. Estimates may not sum due to rounding.

Final Thoughts

The decision of whether to maintain the status quo, reduce or eliminate cash bail undoubtedly continues to be debated in Hampton Roads and in Virginia. Maintaining the status quo is a policy choice under increasing pressure at the state and local levels. The no cash bail policy implemented by the commonwealth’s attorney from Norfolk, and the calls from prosecutors in Newport News, Hampton and Portsmouth to end cash bail statewide, are signals that, much like marijuana decriminalization and then legalization, cash bail reform may be on the horizon.

If, as evidenced by the increasing number of states reducing or eliminating cash bail, change does come to Virginia and Hampton Roads, what would it mean? **First, simply eliminating cash bail would not release all or even most pretrial inmates.** New Jersey is the only state to successfully implement a policy, in 2017, that largely eliminated cash bail. After declining 20% in the first year, the number of pretrial inmates in 2020 remained largely unchanged.³⁵ Data show that many of those arrested in Virginia either receive a summons or, if transported to jail, are released within 24 hours of confinement.

Second, an efficient and just pretrial system would require more than just eliminating cash bail. Judges must still have an effective way to ensure court appearance and public safety, while at the same time identifying defendants eligible for release in a quick and efficient manner. While Virginia already has much of the necessary framework in place, it would require more than simply expanding pretrial services. The Virginia Pre-trial Data Project review of court practices in pretrial services agency localities found in many instances that judges do not receive any information from pretrial services, and that several defendants are placed on pretrial supervision without first receiving a risk assessment. Any reform should ensure that sufficient resources are available and properly utilized.

Third, eliminating cash bail would not result in the cost savings to local governments some might expect. More importantly, while

³⁵ New Jersey Courts Criminal Justice Reform Statistics, Jan. 1 to Dec. 31, 2020, <https://njcourts.gov/courts/assets/criminal/cjrreport2020.pdf?c=481>.

the cost of pretrial services is significantly lower than detention, a wider implementation would almost certainly mean cost increases. The burden on localities to fund nearly half of the program could also lead to inequities in funding and outcomes. The state would almost certainly have to increase its aid to the cities and counties unable to finance the program on their own. Even the most optimistic estimates suggest the savings would constitute a fraction of public safety budgets.

Fourth, care must be taken to differentiate between defendants who do not pose a risk to the community and those who may engage in criminal behavior or flee justice. More than 3 in 10 defendants released on more stringent conditions (supervision and/or secured bond) in the 2017 VPDP cohort were arrested on a new charge after being released from confinement while awaiting trial. Differentiating between these

defendants and those who fail to appear because of scheduling conflicts, lack of transportation or other issues would be a continuing challenge.

Lastly, shifting the pretrial system from wealth-based to risk-based would likely be a more equitable form of pretrial justice; but the impact of eliminating cash bail on racial disparities remains to be determined. A 2019 report on the performance of New Jersey's cash bail reform showed that in the two years since implementation, racial disparities in arrests and the jail population persist. **Cash bail reform is not a panacea for all that ails the criminal justice system, but taking a risk-based approach that reduces subjectivity and potential bias, and applying patience and objective analysis, is a step in the right direction.**

