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# Presumptions against bail were a betrayal of a central American tenet: **innocent until proven guilty**

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**Imagine that you are arrested and taken before a magistrate.**

Your mind swells with concerns over your alleged crime, your family, and your financial situation. As you work to gather your emotions and fears, you are then instructed that **you will be detained unless you can prove why you are deserving of bail.** You likely have to do this on your own, **without any lawyer to help you,** and often the judge will inform you that it's better to stay silent because it could hurt you in the future.

That was the painful reality for many individuals thrown into the criminal legal system and forced to navigate it alone. **In 2021, the Virginia General Assembly repealed the harmful system of presuming that someone should be detained based on charge alone. Instead, bail decisions were returned to judges and magistrates** to look at each case and make release decisions, including imposing any necessary conditions for safety and court appearance.

The legislation replaced the unfair system of presumptions with specific factors for a judicial officer to apply. These factors are a better way to address individualized safety concerns and train judicial officers to assess situations directly rather than using offenses as a proxy. **Doing anything less denies a person of their presumption of innocence.**

**CURRENT LAW after the repeal of presumptions:** When making bail decisions, a judge or magistrate can decide to detain anyone if the judge or magistrate believes the individual is a flight risk or a danger to the community.

**We should be able to trust judges to assess each case and individual and make a fact specific determination about release**

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# Returning to a System of Presumptions Against Bail Would Harm Virginia

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## Presumptions Against Bail Resulted in Inequitable Detention

Presumptions against release result in inequities in our legal system – those who have resources are often able to overcome the presumptions while people who can't afford an attorney are left detained while they wait for their case to be heard. Black and brown Virginians are more likely to not be able to hire their own attorney, though this impacts many working class and poor white Virginians as well.

## Presumptions Against Bail Made Us Less Safe

- Public safety encompasses far more than arrest numbers. Public safety means members of the community maintain their housing and job security, can be home to care for their children, and uplift and support their community.
- Detention is deeply destabilizing and traumatizing and strips people of far more than their individual freedom. Numerous studies show that as little as three days of detention can completely uproot an individual and cause housing instability, loss of employment, and family destabilization. This destabilization and trauma can lead individuals to make poor decisions. Data confirms that jailing individuals pretrial for any length of time is associated with a higher likelihood of a new arrest before trial.
- People who are not a flight risk and pose no danger to the public or themselves should be able to defend their criminal case from the safety of their homes and with the support of their families, rather than behind bars

## Presumptions Against Bail Cost our Community

- In the first six months after the repeal of presumptions went into effect, there were 8,482 individuals who were charged with at least one offense that would previously have triggered a presumption against bail. **Annually around 17,000 Virginians were presumed to need to be detained pretrial based on charge alone.**
- Virginia estimates that each of those 17,000 people that we detained would've been held for 47.54 days. **That is 806,469 days of detention each year not based on anything specific about their case or the accused person.**
- In 2020, estimated total state support for local jails averaged \$37.58 per person held, per day.

**By removing the presumptions against bail Virginia could save up to \$30.3 million per year.**

To compare, that's what it costs to educate 5,400 students for a full year in our public schools.

**Judicial officers already have all the tools they need to assess whether a person accused of a crime is too great of a risk to be released. Virginia doesn't need presumptions. Let's preserve the common sense approach that saves taxpayers money and keeps Virginians safe.**