Impacts of Presumptions Against Bail
On Pretrial Release and Public Safety in Virginia

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Executive Summary

- Between 1996 and 2021, many defendants in Virginia's criminal legal system faced statutory presumptions against bail. These presumptions were based on public safety arguments, with the burden shifted to the defendants to prove they did not pose dangers to their communities.
- To date, there has been no statistical analysis of the number of individuals affected, nor of whether the presumptions actually protected public safety. This is largely due to the non-availability of statewide data on presumptions and pretrial conditions.
- For this analysis, we use the Pretrial Data Project microdata released by the VA Criminal Sentencing Commission with presumptions against bail identified, which reflect all defendants who were charged with a crime in October 2017.
- We find that 9.5% of defendants statewide were subject to presumptions against bail in the 2017 sample, with an additional 22% of defendants who may have been subject to them (for whom the Sentencing Commission could not conclusively confirm their status). These defendants were much less likely to be released pretrial (50%, compared to 83% among other defendants), and even when released, they frequently faced more onerous release conditions (even when compared to people charged with similar crimes).
- The lower release rates of defendants subject to presumptions were not selectively of defendants at higher risk of new criminal activity. Many defendants with the lowest risk assessment ratings (based in large part on their minimal criminal records) were detained at higher rates when subject to presumptions.
- To further assess whether presumptions improved public safety, we compare the rearrest rates for defendants subject to presumptions who were released pretrial to those of defendants not subject to presumptions who were also released. Fewer than 5% of defendants who faced presumptions but were released were charged with a new violent offense in the pretrial period, nearly identical to the share among defendants who did not face presumptions.
- This finding is driven by differences in the characteristics or risk factors for released defendants who were subject to presumptions and those who were not. We obtain the same findings even when controlling for many other factors, including the defendants' charges, demographics, locality, and risk assessment ratings.
- Why do we find this? The charge a defendant faces is a very weak predictor of the likelihood they will be arrested for a new crime. Because presumptions are largely based on the charge the defendant faces, they are also very weak predictors of subsequent criminal activity. As such, they are not useful as tools to distinguish high- and low-risk release (i.e., to identify defendants with high risk of new criminal activity).
- The presence of presumptions (prior to 2021) likely cost at least $65 M in additional jail operating costs (with at least $23M of that borne by the Commonwealth budget) and created significant unmeasured burdens on defendants, their families, and communities, without improving public safety.

Contents

Introduction: Presumptions Against Bail in Virginia

Presumptions against bail were first introduced in Virginia in 1996.[1] Prior to this point, the burden was on the Commonwealth's Attorney to prove that there was probable cause to believe that either the defendant posed an unreasonable danger to the public or that s/he would not appear for trial or further hearings. Judges then made the final determination on release in these cases.[2] In 1996, the Virginia General Assembly (GA) passed a new statute inserting a rebuttable presumption on the basis of three specific conditions associated with major drug distribution offenses (for example, the defendant had previously been convicted as a "drug kingpin").[3] In these cases, the burden of proof was shifted to the defendant to show that the defendant did not pose an unreasonable danger and would appear for subsequent hearings. Over the ensuing 25 years, this relatively narrow set of exceptions was dramatically expanded 10 times to cover more than 40 circumstances.[4] Defendants facing charges falling under these statutes were thus presumed to be a danger to public safety based almost entirely on the charges they faced. The expansion of these presumptions in Virginia contrasted with trends in other states; unlike Virginia, 41 other states had a presumption of pretrial release codified in state constitutions.[5]

The wide-ranging set of charges associated with presumptions meant that, by 2017, many defendants faced these presumptions. However, how many actual defendants faced these presumptions has never actually been quantified, nor has there been any statistical analysis of whether the presumptions actually protected public safety. This is largely due to the non-availability of data on presumptions or pretrial conditions in Virginia more broadly. This study is intended to address this gap in evidence on the extent of presumptions against bail and their impacts on public safety by using the October 2017 statewide dataset described below. These data only became available in December 2021, when the Virginia Criminal Sentencing Commission (VCSC) released the first dataset on pretrial conditions reflecting all defendants statewide.[6]

In 2021, the GA passed a statute eliminating all presumptions against bail, essentially returning to the law as it stood in 1996.[7] The new statute did include a new subsection that indicated the factors judges and magistrates are to consider when determining pretrial release (although these factors closely follow those already listed elsewhere in the code). Our study of 2017 presumptions can also help in understanding the likely impacts of repealing presumptions in 2021.

Data

We use the Virginia Pretrial Data Project (PDP) microdata release, provided by the VCSC on December 1, 2021. These data reflect all individuals charged in October 2017 with an offense potentially punishable by jail time. The VCSC compiles these data from eight distinct sources,

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[1] Kennedy, Bryan, and Catherine F. Zagurskie. "Empowering the Defense to Confront the Government's Powers: Virginia Criminal Justice Legal Reform." *Richmond Public Interest Law Review* 25.1 (2022): 47-90.
[2] *Id.*
[3] *Id.*
[4] *See* VA. CODE ANN. § 19.2-120 (B) (2020)
[5] *Pretrial Release: Guidance for Courts*, NAT'L CONF. OF STATE LEGISLATURES, https://www.ncsl.org/research/civil-and-criminal-justice/pretrial-detention.aspx (last visited Jan 3 2023).
[6] In 2020, the Virginia State Crime Commission (VSCC) and VCSC compiled the first comprehensive dataset on pretrial conditions reflecting defendants charged in October 2017. In 2021, the GA enacted a new statute tasking the VCSC with publicly releasing this data (along with subsequent cohorts).
[7] *Id.* at *1.*

including the Circuit, General District, and Juvenile and Domestic Relations District Court Case Management Systems maintained by the Supreme Court of Virginia's Office of the Executive Secretary (OES). Each individual defendant is recorded in the data as one observation; in cases where individuals have multiple contact events in October 2017, only the earliest contact event and associated variables are recorded. A contact event is defined as all charges against a defendant in the same jurisdiction and the same date having the same bail processing number in the OES eMagistrate system.[8]

Individuals were followed in the dataset by the VCSC until either the disposition of their case or 15 months had elapsed since their contact event. This means the follow-up window runs until December 31 2018 (approximately 15 months after average contact event date in the sample).

The full October 2017 dataset contains approximately 22,986 defendants. Because our interest is in understanding how presumptions affected pretrial detention, we focus only on defendants who faced potential detention. To do so, we limit our sample to the 11,487 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). Defendants released on a summons or facing charges not punishable by incarceration were thus excluded.

To reflect whether a defendant likely faced presumptions against bail, we utilize the indicator provided by the VCSC data ("Indicator_PresumptiveDenialOfBail19.2_120"). This is based on the VCSC staff review of whether the charge faced by the defendant included one listed in Virginia Code §19.2-120. In some cases, the VCSC staff identified defendants who may have been subject to presumptions but where this could not be confirmed. We discuss these cases separately below.

We consider a set of measures to reflect a defendant's pretrial release outcomes. These include whether the defendant was released pretrial, the type of bond on which the defendant was released (personal recognizance, unsecured bond, or secured bond), whether the defendant was assigned to pretrial services supervision, and the length of time the defendant was in detention prior to release.

We also consider how defendants' risk assessments shaped their release conditions and subsequent outcomes. The use of risk assessment tools has grown substantially over the past several decades, although there are ongoing debates about the validity, fairness, and impacts of these tools.[9] In Virginia, the Virginia Pretrial Risk Assessment Instrument (VPRAI) tool has been used, although alternatives are being considered for future use. Because the VPRAI tool ratings were not recorded in any of the underlying datasets on which the PDP is based and the tool is based in part on an interview with the defendant, the VCSC could only retroactively reproduce this rating partially. In addition, the VCSC retroactively produced ratings using the Public Safety Assessment (PSA) tool. The PSA was developed by Arnold Ventures and has been used (and studied) in a number of localities and states outside of Virginia. For each defendant, the VCSC computed scores for the likelihood of New Criminal Arrest (NCA) and likelihood of New Violent Criminal Arrest (NVCA) scales.

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[8] The same bail process is defined as having the same "Commit, Bond, Release" (CBR) number in the eMagistrate system.

[9] For a meta-analysis of the use of pretrial risk assessments, see Bechtel, Kristin, Alexander M. Holsinger, Christopher T. Lowenkamp, and Madeline J. Warren. "A meta-analytic review of pretrial research: Risk assessment, bond type, and interventions." *American Journal of Criminal Justice* 42, no. 2 (2017): 443-467. For another recent study, see Barno, Matt, Deyanira Nevárez Martínez, and Kirk R. Williams. "Exploring alternatives to cash bail: An evaluation of Orange County's pretrial assessment and release supervision (PARS) program." *American Journal of Criminal Justice* 45, no. 3 (2020): 363-378.

There are many potential public safety outcomes one might consider. Because the PDP microdata is anonymized and thus cannot be linked to individual outcomes reflected in other datasets, we must rely on those produced by the VCSC in the PDP. We thus focus on whether the defendant was arrested for a subsequent offense in Virginia during the pretrial follow-up period. The VCSC obtained defendants' Virginia State Police (VSP) criminal history records, supplemented by information from the OES Court Case Management System, as well as Fairfax County and Alexandria Circuit Court Case Management Systems. We thus rely on their measure of whether the defendant was arrested for a followup offense ("ArrestedforNewOffense"), as well as details of these charges (misdemeanor vs. felony, whether the charge was violent, etc.).

Finally, the PDP also provide a series of other variables that we use as covariates in our analysis, including defendants' gender, age (in 10-year categories), race, and indigency status (proxied by whether the defendant was assigned a public defender).

Presumptions and Pretrial Release

How frequently did presumptions against bail apply in cases in our October 2017 sample? Approximately 9.5% of all defendants charged with a jailable offense were confirmed to have been subject to presumptions against bail, while an additional 22.7% *may* have been subject to presumptions. That is, as many as a third of all defendants in Virginia may have been subject to presumptions against bail, making these far more common than the narrow set of cases originally envisioned when presumptions were first enacted. Extrapolated to a full 12-month period, these rates indicate that between 13,000 and 45,000 individuals in Virginia were subject to presumptions in 2017.

Table 1 below lays out the number of individuals subject to presumptions in our sample, as well as whether these defendants were released pretrial. Across all defendants, nearly 83% are released prior to trial, but this share falls to only 50% for those known to have been subject to presumptions. That is, half of defendants subject to presumptions were not released at all during the entire pretrial period.

Table 1: Presumptions and Pretrial Release

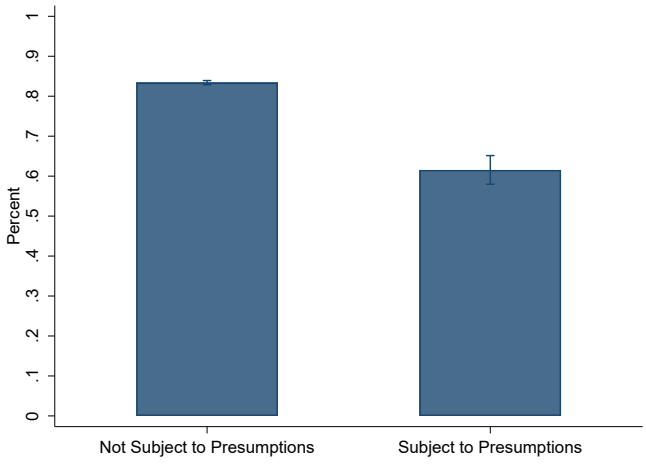
	Presumptions against bail				
Was Defendant Released Pretrial?	0 (None)	1 (Maybe)	2 (Yes)	9 (Unknown)	Total
Not Released					
Frequency	1,167	276	540	1	1,984
Percent (of column)	15.06	10.57	49.59	2.63	17.27
Released					
Frequency	6,583	2,334	549	37	9,503
Percent (of column)	84.94	89.43	50.41	97.37	82.73
Total					
Frequency	7,750	2,610	1,089	38	11,487
Percent (of column)	100.00	100.00	100.00	100.00	100.00

These differences in pretrial release could be driven in part by other factors which also differ for those subject to presumptions and those who were not, including the nature of the charges, differences in release rates across localities, the defendants' demographics, and other aspects. To isolate the specific role of presumptions in leading to more pretrial detention, we control for all of the aforementioned factors, including the Virginia Criminal Code category of the most serious charge (i.e., 63 distinct categories, such as assault, larceny, etc.), as well as whether the contact event involved a felony or only misdemeanor offenses (or both). To account for other factors associated with the defendant's criminal records, we also control for the VPRAI risk rating assigned to each defendant.[10]

The results, displayed in Figure 1 below, continue to show a large gap in release rates between defendants subject to presumptions (60%) and those who were not (84%). That is, holding constant the other factors surrounding each defendant's contact event, the presumptions themselves meant defendants subject to them were much more likely to be detained for the full pretrial period. For example, a 30-year-old, white, male defendant whose most serious charge was an assault that triggered a presumption was far more likely to be detained for the entire time until his trial than a similar 30-year-old white man with a similar criminal record whose most serious charge was also an assault but not one that triggered a presumption.

[10] We implement linear regression models with fixed effects for the most serious VCC charge prefix (63 categories), VPRAI risk level (7 categories), court type (4), overall offense type (5), locality (127), and the defendant's age group (6), gender (2), race (5), and indigency status (2). Standard errors are clustered by locality. We also confirm these results are robust to the use of logit models for binary outcomes.

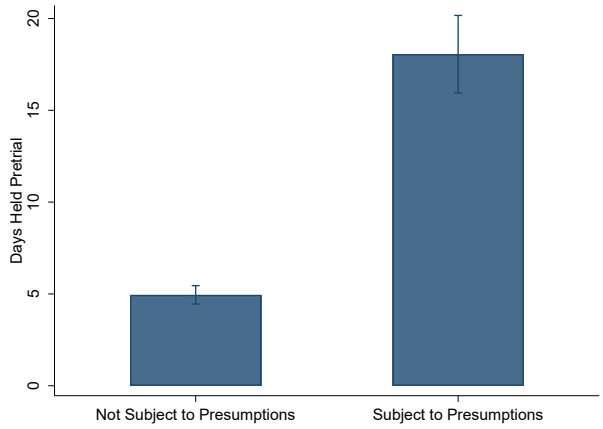
Figure 1: Share of Defendants Released Pretrial (adjusted for other factors)



Sample includes all defendants arrested for jailable offense (N = 11,487). Each bar reflects the share of defendants who were released during the pretrial period, adjusted for other factors using linear models described in footnote 10. Confidence intervals (95%) shown for each estimate.

The dramatically lower release rates among those subject to presumptions also mask another important dimension: many of those subject to presumptions who were eventually released were nonetheless detained for long periods of time. As Figure 2 below illustrates, defendants who were subject to presumptions but who were eventually released were held, on average, for 13 more days than those who did not face presumptions and were released.[11]

Figure 2: Average Days Held Pretrial Among Released (adjusted for other factors)

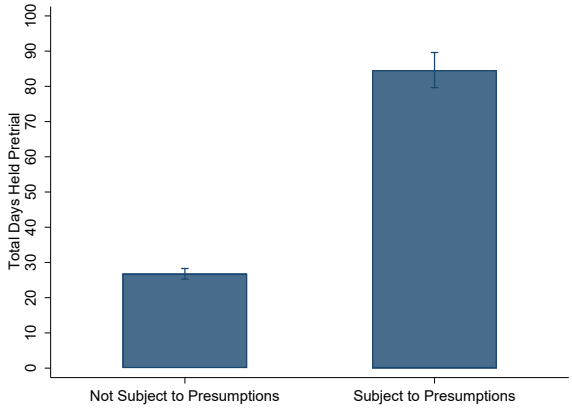


Sample includes all defendants arrested for jailable offense who were released pretrial (N = 9,404). Each bar reflects the average days held during the pretrial period for each presumptions category, adjusted for other factors using linear models described in footnote 10. Confidence intervals (95%) shown for each estimate.

[11] While Figure 2 only plots the average days held for each presumptions category, there are also differences throughout the cumulative distribution of days held. For example, approximately 76% of defendants subject to presumptions who are eventually released are detained for a week or longer; only 26% of individuals not subject to presumptions are held a week or longer.

Taken together, these findings indicate that presumptions impose much longer detention on defendants subject to these charges than those with similar charges and other factors. As Figure 3 shows, among all defendants charged with jailable offenses (including those released pretrial and those not released[12]), those subject to presumptions were held for an average of 85 days, while those who did not were held for an average of only 27 days.

Figure 3: Average Days Held Pretrial Among All Defendants (adjusted for other factors)

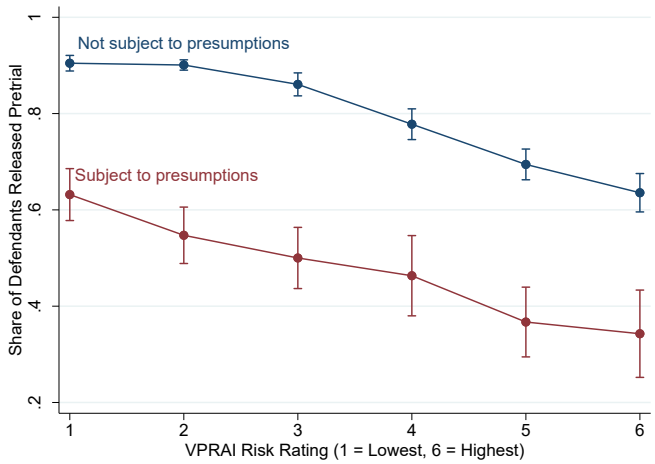


Sample includes all defendants arrested for jailable offense (N = 11,487). Each bar reflects the average days held pretrial for each presumptions category, adjusted for other factors using linear models described in footnote 10. Confidence intervals (95%) shown for each estimate.

As we note above, roughly half of defendants who were subject to presumptions were nonetheless released, as judicial officers still retained the ultimate authority over release decisions. One might theorize that if defendants subject to presumptions represented greater risks to public safety, detaining them more frequently could be a rational response on the part of judicial officers. In the next section, we examine whether there is any evidence that these individuals actually represented greater risks to their communities based on whether they were charged with new criminal offenses when they were released. Here, however, we offer an additional piece of evidence: the criminal records and accompanying risk assessment ratings that were available to judicial officers when determining pretrial release. If defendants *were* frequently able to rebut their presumptions with evidence that they represented low public safety risks, we would expect the individuals with the lowest risk ratings to be frequently released, likely at rates approaching those of individuals not subject to presumptions. In Figure 4, we show the rates at which defendants were released separately for each of the VPRAI risk rating levels (where 1 represents the lowest risk and 6 the highest). The estimates in the figure control for all of the aforementioned demographic, charge, and other variables. The points represent the estimated share, with vertical bars denoting the 95% confidence intervals (i.e., margins of error). We can clearly see that even defendants with the lowest risk ratings were much less likely to be released when they were subject to presumptions. Our results show the gap in release due to presumptions is at least as large among this lowest-risk group as among the highest ones. Clearly, suggesting the shifting of the burden of proof to defendants led even lower-risk defendants to face greater challenges in being released pretrial.

[12] For defendants who were not released, we impute the days held as the time between their contact event and the case disposition.

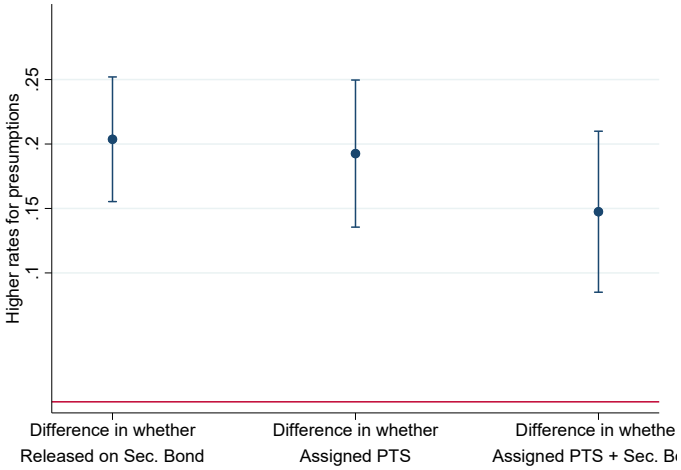
Figure 4: Share of Defendants Released Pretrial by Risk Rating Level (adjusted for other factors)



Sample includes all defendants arrested for jailable offense (N = 11,487). Each bar reflects the share of defendants who were released during the pretrial period, adjusted for other factors using linear models described in footnote 10. Confidence intervals (95%) shown for each estimate.

Other conditions of release also differed markedly for those subject to presumptions. Figure 4 highlights the differences in frequencies of these conditions (again controlling for the other factors discussed above). Among those defendants who were released on either secured or unsecured bond, those subject to presumptions were approximately 20 percentage points more likely to be given secured rather than unsecured bonds. Similarly, those subject to presumptions were nearly 20 percentage points more likely to be assigned pretrial supervision by an agency than otherwise similar defendants who did not face presumptions. Even among defendants who were given secured bonds, those subject to presumptions were 15 percentage points more likely to be assigned to supervision.

Figure 5: Secured Bond and Supervision Differences due to Presumptions (adjusted for other factors)



Each point reflects the difference in each outcome associated with whether the defendant was subject to presumptions (adjusted for other factors using linear models described in footnote 10). The leftmost estimate reflects the difference in whether a defendant was released on secure bond (among all defendants, N = 11,487). The center estimate reflects the difference in whether the defendant was assigned pretrial services (PTS) among all defendants who were released on either secured or unsecured bond (N = 9,125). The rightmost estimate reflects the difference in whether the defendant was assigned PTS among only defendants who were released on secured bond (N=4,127). Confidence intervals (95%) shown for each estimate.

These results show the many ways in which those individuals charged with an offense which triggered presumptions against bail were treated differently when courts considered pretrial release. These individuals were detained at far higher rates and were far more likely to be detained for the entire pretrial period. Even among those who were released, this release came after longer detentions and often carried more severe bond and supervision requirements. Again, these differences are not due to other factors that may be correlated with presumptions cases, as our analysis accounts for a robust set of these potential confounding factors.

These additional burdens on individuals facing presumptions were theoretically justified by the General Assembly because they were assumed to be balanced by the reductions in risk to the public. We thus turn to the question of whether presumptions against bail actually improved public safety.

Presumptions and Public Safety

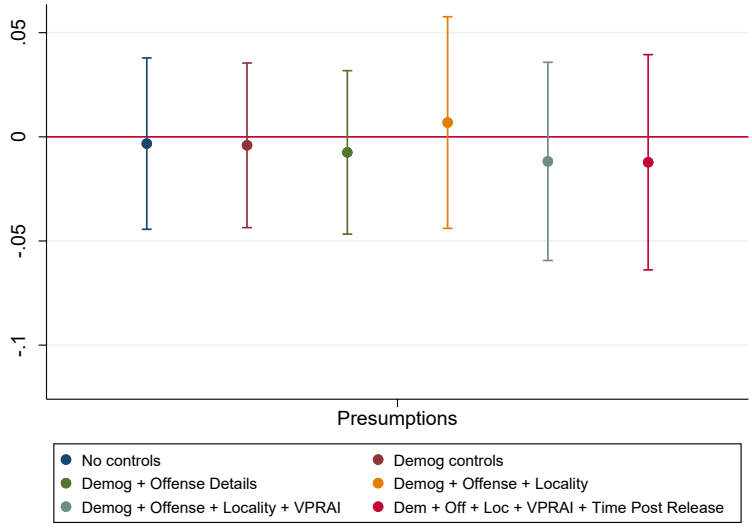
To assess the impacts of presumptions against bail on public safety, we compare the rates of new offenses during the pretrial period for those defendants who were subject to presumptions with those who were not. While many defendants subject to presumptions were detained for the full period, roughly half were not, providing us with a sample of released individuals whose new criminal activity is observed in the PDP data. We thus limit our sample to only those defendants who were released during the pretrial period (including those who were subject to presumptions and those who were not).

As we noted above, it is possible that defendants subject to presumptions who were nonetheless released may have posed selectively lower risks to public safety. In other words, the subset of individuals subject to presumptions who were released may have had other compensating factors that lowered their risks to public safety. We might therefore not expect to find any difference in rearrest rates between the released sets of individuals subject and not subject to presumptions. Such a situation would not allow us to infer the true risks posed by the full set of individuals subject to presumptions.

To account for this possibility, we use an approach based on a large array of control variables. These variables include the defendants' demographics, the details of the original offense (including the VCC prefix and category of the offense), average rearrest rates for each locality, the VPRAI risk assessment ratings, and the length of time between a defendant's release and case disposition. All of these factors may have affected a defendant's post-release criminal activity. By adding these factors sequentially, we can assess whether our estimated differences in rearrest rates for presumptions vary based on the set of control variables included. If there were indeed selective release for defendants subject to presumptions on the basis of their risk, we would expect to find differences in rearrest rates emerge only as we control for a larger set of these variables.

In Figure 5, we plot these estimated differences in new arrests between those subject to and not subject to presumptions. The leftmost point reflects these differences with no control variables included in the model, while subsequent points add successively greater numbers of control variables. To reflect the uncertainty of these estimates, vertical bars around each point reflect 95% confidence intervals.

Figure 6: Differences in New Arrests Due to Presumptions



Each point reflects the difference in the rate of new arrests associated with whether the defendant was subject to presumptions, adjusted for other control variables described in the legend and estimated via a linear regression. The sample includes all defendants who were released during the pretrial period (N = 9,404). Confidence intervals (95%) shown for each estimate.

We find no evidence of any differences in new arrest rates between defendants subject to presumptions and those who were not. In fact, our estimate is consistently zero differences due to presumptions, with fairly narrow confidence intervals, irrespective of which set of control variables we include. The upper end of our confidence intervals in almost all of these models is 4%. That is, we can confidently say that defendants subject to presumptions were not more than 4 percentage points more likely to commit a new offense than otherwise similar defendants not subject to presumptions, and that the most likely difference between these groups is zero.

The consistency of results across these control variable sets also suggests two important corollary findings. First, there is no evidence that the release of defendants subject to presumptions was selective on the basis of their risk. In other words, it is not likely that the similarity in rearrest rates between presumptions groups is because those subject to presumptions were more closely scrutinized in terms of their risk. Again, if that were the case, we would find differences emerging once we adequately control for other risk factors. We do not. Second, it is unlikely that adding further controls for other unobserved factors would alter our main findings. The stability of our estimates along the many factors we already include strongly suggests these same findings would obtain even were we to add further controls.

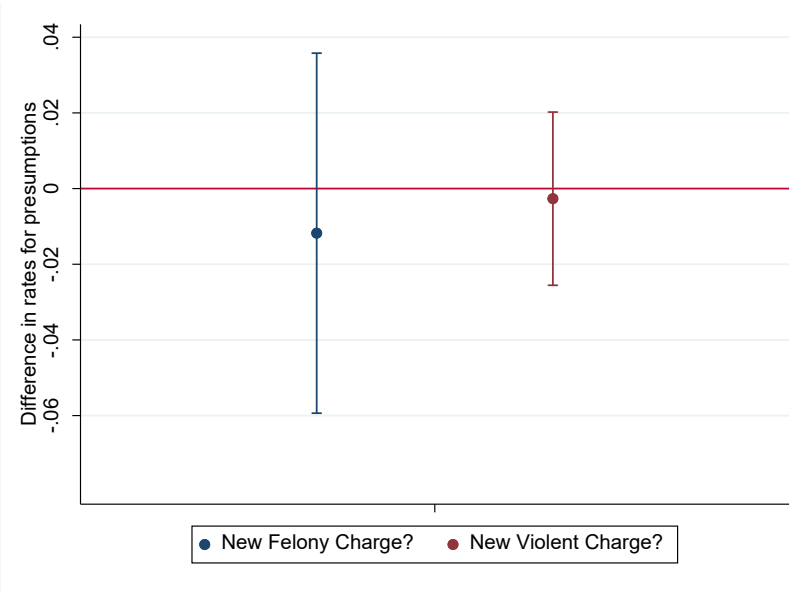
A final important point can be drawn from Figure 5. Because individuals subject to presumptions were typically held in detention longer than those not subject to them, there was less time during which they may have engaged in new criminal activity when released prior to trial. This may potentially mask the higher risk these individuals posed. The rightmost estimate in the figure thus controls for the amount of time post-release.[13] Our results continue to show no significant differences in new arrests associated with presumptions. In other words, those defendants who were subject to

[13] We include these controls as fixed effects for 30-day bins of the time between pretrial release and December 31 2018.

presumptions were no more likely to be charged with new offenses in any given period than those not subject to presumptions.

While the rate of any new offense type may not have differed between those subject to presumptions and those not, it is possible the types of offenses did exhibit differences. We therefore use the same estimation approach to examine the effects of presumptions on the rate of new felony charges, as well as new violent offense charges. Figure 6 below shows the results for these estimations (adjusted for demographics, offense details, locality, and VPRAI risk rating). They again show that no distinguishable differences in new felony or violent charges for those subject to presumptions. In both cases, we can be certain that those facing presumptions were not more than 4% more likely to be charged with these offenses. In fact, if anything, our findings suggest they were slightly *less* likely to be charged with these offenses.

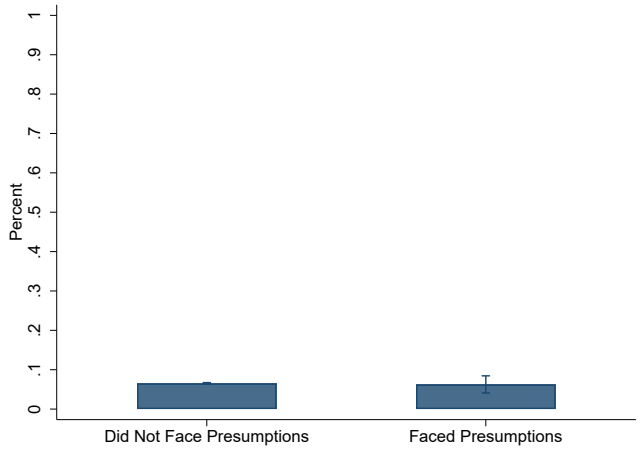
Figure 7: Differences in New Felony and Violent Charges Due to Presumptions (adjusted for other factors)



Each point reflects the difference in each outcome associated only with whether the defendant was subject to presumptions (adjusted for other factors using linear models described in footnote 10). The left estimate reflects the difference in whether a defendant was charged with a new felony offense, while the right estimate reflects the difference in whether the defendant was charged with a new violent offense (as categorized by the VCSC using the PSA violent offense definition). Sample includes all defendants released during the pretrial period (N = 9,404). Confidence intervals (95%) shown for each estimate.

For perspective, very few defendants who are released pretrial are subsequently charged with a new violent offense (<5%). As Figure 7 below shows, this rate is essentially identical for those individuals who were subject to presumptions. We find no evidence that these individuals pose a greater risk to public safety than others, including others whose initial offense was not violent.

Figure 8: Shares of Defendants Released Who Are Charged with a New Violent Offense (adjusted for other factors)



Each bar reflects the share of defendants charged with a new violent offense (as categorized by the VCSC using the PSA violent offense definition), adjusting for all other control variables specified in footnote 10. Sample includes all defendants released during the pretrial period (N = 9,404). Confidence intervals (95%) shown for each estimate.

Why do presumptions against bail not identify high-risk individuals who are more likely to commit new crimes when released? One major reason is that the risk of new criminal offenses is not closely correlated with the initial offense with which an individual is charged. Throughout our analysis of new criminal charges, the maximum R^2 we find in our estimations is 0.12, even when we include the full set of control variables. This indicates that all of these variables can only explain roughly 12% of the variation in new criminal activity. In essence, new criminal activity is not well-predicted by all of these factors. Many individuals with high risk factors do not engage in new crimes, and many individuals with low risk factors do (although, to be clear, overall rates of new violent crimes remain low for all individuals). Thus, an approach like presumptions against bail—which primarily uses the charge to determine pretrial release—cannot be effective in identifying high-risk individuals.

Benefit-Cost Analysis

When originally enacted, the statute on presumptions against bail was motivated by the hoped-for reduction in public harm, which was thought to outweigh the burdens to the individual defendants and the costs to the state. As we find above, there appear to be no meaningful benefits in terms of reduced risk of new criminal offenses associated with presumptions. We therefore turn to the costs borne by the state, localities, and other actors and the burdens imposed on the defendants.

Table 2 lays out the additional jail costs due to the presence of presumptions for our 2017 sample. As noted above, the total annualized number of defendants known to have faced presumptions was 13,000, and an additional 32,000 defendants may have faced these (line 1 below). We previously estimated that the presumptions were associated with an increase in the average number of days held pretrial of 58 days per defendant (line 2). Taken together, these results indicate that at least 754,000 and as many as 2.6M additional jail days annually were due to the presence of presumptions in 2017. For perspective, the Commonwealth of Virginia Compensation Board's FY18 Report to the

General Assembly tallied jail operation costs statewide.[14] The report indicates there were approximately 10.5M inmate days across all 59 Virginia jails in FY18[15], including both pretrial and post-trial days. Our findings suggest that approximately 7% (and as much as 25%) of all inmate days were due only to the presence of presumptions. These are the *additional* days of detention due to the presence of presumptions, accounting for the number of days these same defendants would likely have been held in the absence of presumptions

In FY18, total jail operating costs per inmate day were $87.20 (line 4). The Commonwealth itself funded 35% of these costs. Given the additional jail days due only to presumptions, the total additional costs imposed by the use of presumptions in known cases were $65.7M and may have been over $200M accounting for cases where presumptions may have been in place. The Commonwealth paid for at least $23M of these costs, and potentially as much as $80M.

Table 2: Additional Jail Costs Due to Presumptions

1	Number of defendants subject to presumptions annually	13,000 – 45,000
2	Average additional jail days due to presumptions per defendant (Figure 3 above)	58
3	Total number of additional jail days due to presumptions annually (= 1 x 2)	754,000 – 2.6M
4	Jail operating expenses per inmate day (FY18)	$87.20
	Total jail operating expenses due to presumptions (=3 x 4)	**$65.7 M - $228M**
	Total jail operating expenses due to presumptions paid by Commonwealth of VA	***$23M - $80M***

Finally, we also note that the use of presumptions imposed other major costs. Chief among these are the costs borne by the individual defendants, including the impacts on their own well-being and that of their families, as well as their lost incomes and other borne costs. Although difficult to estimate, these costs are real and likely to be large. For example, one recent study found that being released pretrial increases the likelihood of being employed three to four years later by as much as a quarter. The 24% reduction in pretrial release we estimate due to presumptions could lead to a substantially higher unemployment rate among those who faced these presumptions.[16] Again, many other costs are not estimable given the data currently available in Virginia. However, in many cases, we expect they could likely exceed the sizable direct costs of jail.

Conclusions

In the quarter-century since their introduction in 1996, presumptions against bail were dramatically expanded in Virginia to cover a wide-ranging set of charges. Our study finds that these presumptions applied in many more cases than may have been known, with as many as a third of all defendants in our study sample potentially subject to presumptions (and 10% of defendants confirmed to have been subject to them).

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[14] Commonwealth of Virginia Compensation Board, "FY18 Jail Cost Report," accessible at https://www.scb.virginia.gov/docs/fy18jailcostreport.pdf [accessed January 19, 2023].

[15] Fiscal Year 2018 included October 2017, so most closely coincides with our PDP sample period.

[16] Dobbie, Will, Jacob Goldin, and Crystal S. Yang. "The effects of pretrial detention on conviction, future crime, and employment: Evidence from randomly assigned judges." *American Economic Review* 108, no. 2 (2018): 201-40.

These presumptions against bail shifted the burden to the defendants to prove they did not pose dangers to their communities. As a result, far fewer defendants were released pretrial. Even when released, these defendants were typically held for longer periods until their release and more frequently faced more challenging release conditions, including secured rather than unsecured bonds and pretrial supervision.

The detention burdens borne by these defendants likely caused additional harms to the long-term well-being of these individuals, their families, and their communities. Moreover, the costs to the Commonwealth, localities, and the federal government of incarcerating these individuals were far larger than may have been understood. The combination of higher detention rates and longer detention periods for those subject to presumptions meant that as many as approximately 7% (and as much as 25%) of all inmate days in Virginia's jails were due only to the presence of presumptions. The operating costs associated with the days for defendants known to have been subject to presumptions exceeded $65M annually, with Virginia's state budget bearing more than $23M of these costs. Accounting for other defendants who may have faced presumptions increases these costs by a factor of 4 to $80M borne by the state.

If presumptions led to avoided violence or harm to the public, it could be suggested that these costs might be balanced by the societal benefits. Our study uses the sample of individuals subject to presumptions who were released to estimate this risk. We find defendants subject to presumptions were no more likely to be rearrested for a subsequent criminal offense during the pretrial period than those who did not. Fewer than 5% of defendants who faced presumptions but were released were charged with a new violent offense in the pretrial period, nearly identical to the share among defendants who did not face presumptions. This is true even when we account for other differences between presumption and non-presumption cases. Therefore, the cost of presumptions does not result in any benefit.

Taken together, our findings suggest that the 2021 repeal of presumptions saved tens of millions of dollars in jail costs and prevented harms to tens of thousands of Virginians and their families.