



Arraignment Report

Executive Summary

In 20 months, the Burlington Police Department has collected bail data on **1,787** cases. In Chittenden County Court:

- Bail is set in one out of every five cases.
- Half of bail is set at less than \$500.
- One in every five defendants do not show up for arraignment.
- The VT Bail Reform Act of 2018 (Act 164) succeeded in lowering bail for low level offenses.
- Judges tend to assign bail in approximately equal proportions.

Tracking Bail

The victim's advocate at the Burlington Police Department has long been observing arraignments and conditions of release as part of our efforts to protect victims of domestic violence and other violent crimes. Over this past year we have taken this opportunity to record more broadly whether criminal defendants at the Chittenden District Court receive bail, and if so, how much. Although the information at arraignment is public record, the courts in Vermont do not publish bail amounts in an easily accessible way. The Burlington Police Department has an interest in understanding the results of its arrests and investigations.

This analysis covers **1,787** cases, beginning September 12, 2017 to May 23, 2019. **368** cases had some amount of bail assigned, or **21%** of all cases (1 case had a bail of \$1). 69 (4%) cases resulted in the defendant held without bail, or held on related violations. There were 464 felony cases and 1,322 cases with at most a misdemeanor charge (1 case was missing charge information). Cases with a felony charge were more likely (33%) to receive bail than misdemeanor cases (16%).

Current Statute

The Vermont Constitution presumes release, and therefore bail can only be used to mitigate the risk of nonappearance.

Bail cannot be used for:

- Punishing the defendant
- Protecting the public

If the person was cited, no bond may be imposed.

To **hold without bail** a defendant must be charged with an offense that is:

- *Punishable by life imprisonment when the evidence of guilt is great. If the evidence of guilt is not great, the person shall be bailable.*
- *A felony, an element of which involves an act of violence against another person, when the evidence of guilt is great and the court finds, based upon clear and convincing evidence, that the person's release poses a substantial threat of physical violence to any person and that no condition or combination of conditions of release will reasonably prevent the physical violence.*

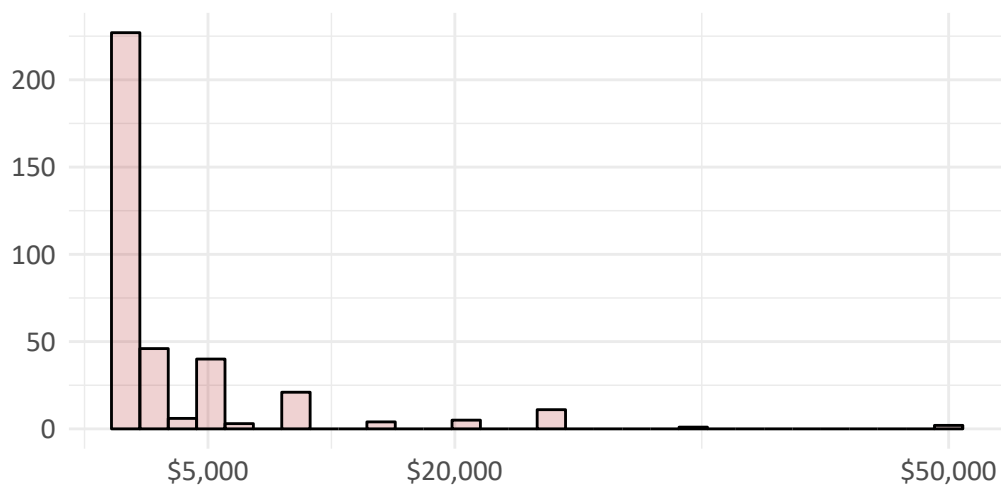


Distribution of Bail

For the most part, the amount of bail set was low. While the mean bail was \$916, the median bail was \$0 due to the large percent of cases without any bail assigned. Excluding all cases where the judge did not assign bail, the respective mean and median bails are \$4,449 and \$500.

Most Bails Are Set Less than \$5,000

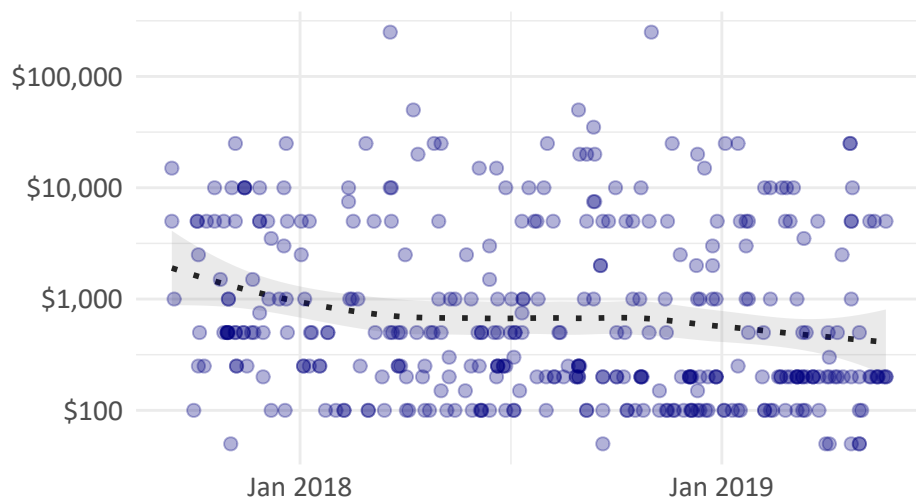
368 cases with bail



Excludes 2 bails set at \$250,000.

Bail Assigned Over Time

Cases with Bail > \$0





Defendants

There were **1,056** defendants during the 20 months covered. 339 defendants were seen before the court more than once, and one defendant was seen 15 times. Notably, defendants did not appear 21% of the time.

Judges did not tend to set higher bail on the defendants who did not show, but they were much more likely to set some bail. 50% of the 374 defendants who did not appear were assigned bail, however the bails set were generally low. When bail was set for a defendant who did not show for arraignment, the median bail was \$200. However, a judge set the largest bail of this study period at \$250,000 when a defendant failed to appear.

Gender and Race

The tables below show how bail is distributed between genders and races. While bail is slightly more likely to be imposed on male defendants, and also set slightly higher, male defendants are also more likely to be charged with a felony. The breakdown of bail by race shows a similar pattern. Two analyses were conducted to assess the effect of demographics on bail assignment.

A logistic regression was run on the probability of receiving any bail; however, it did not produce strong results for either gender or race. Male defendants are slightly more likely to receive bail but this effect decreases when the severity of the charge and prior cases are controlled for. A similar result occurs for the probability of receiving bail for black defendants. Even with all controls, the odds of bail assignment are nearly six times higher for Hispanic defendants; however, this result is likely not stable as it is based on only 8 cases, three with the same defendant.

The second regression was used to explore how demographic factors effect the amount of bail assigned, limited to cases when some amount of bail was assigned. The only factor with a strong effect on the amount of bail set was whether the most serious charge was a felony (see appendix for full results).

Groups with 20 or more cases are included in the tables.

Gender	Cases	Mean Bail*	Median Bail*	Percent Bail	Percent Felony Cases
Female	463	\$4,412	\$200	18%	17%
Male	1,318	\$4,463	\$500	22%	29%

Race	Cases	Mean Bail*	Median Bail*	Percent Bail	Percent Felony Cases
White	1,343	\$4,247	\$250	20%	24%
Black	370	\$5,356	\$500	24%	33%
Asian	59	\$3,629	\$5,000	12%	29%

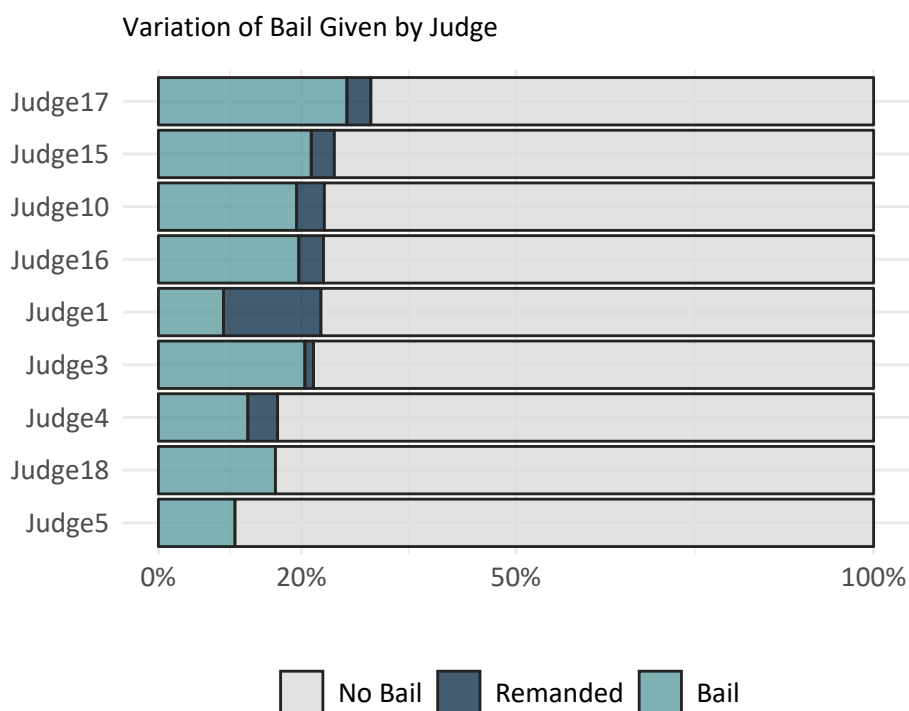
* Mean or median bail when excluding all cases without a bail set (i.e. bail > \$0).



Judges

The chart below illustrates the difference in judges' propensity to assign bail, and includes cases where the defendant is remanded into custody (either held without bail or held on other charges, like a parole violation). Although 19 judges presided over at least one arraignment during the data collection period, the following chart is limited to judges that presided over more than 20.

Although judges do have latitude to assign and set the amount of bail, the BPD did not find a particularly large discrepancy between judges. Most judges tend to assign bail to one out of every four or five cases they see.





Act 164

Act 164, the 2018 VT Bail Statute, went into effect July 1. Its purpose, among other things, is to:

- Require the court to make a finding establishing the defendant’s financial means prior to imposing bail.
- Impose a cap on cash bail for certain misdemeanor offenses, such that no bail in excess of \$200 may be set for any misdemeanor offense that is subject to expungement.
- Create a presumption that courts will release defendants accused of certain misdemeanor offenses who are detained for lack of bail to a home detention program pretrial.
- Provide that repeatedly violating conditions of release does not, by itself, entitle the court to revoke bail entirely.

The following analysis shows that the bail cap had a clear effect on eligible, expungeable offenses. The cap reduced the amount of bail that these cases are assigned. The data does not show clearly that the cap had an indirect effect on bail assignment for non-eligible offenses.

Reduction of bail on eligible, expungeable offenses:

	Cases	Count w/ Bail	Percent Bail	Avg Bail	Median Bail	Max Bail
Pre \$200 Bail Cap	358	66	18 %	\$422	\$250	\$5,000
Post	544	89	16 %	\$268	\$200	\$5,000

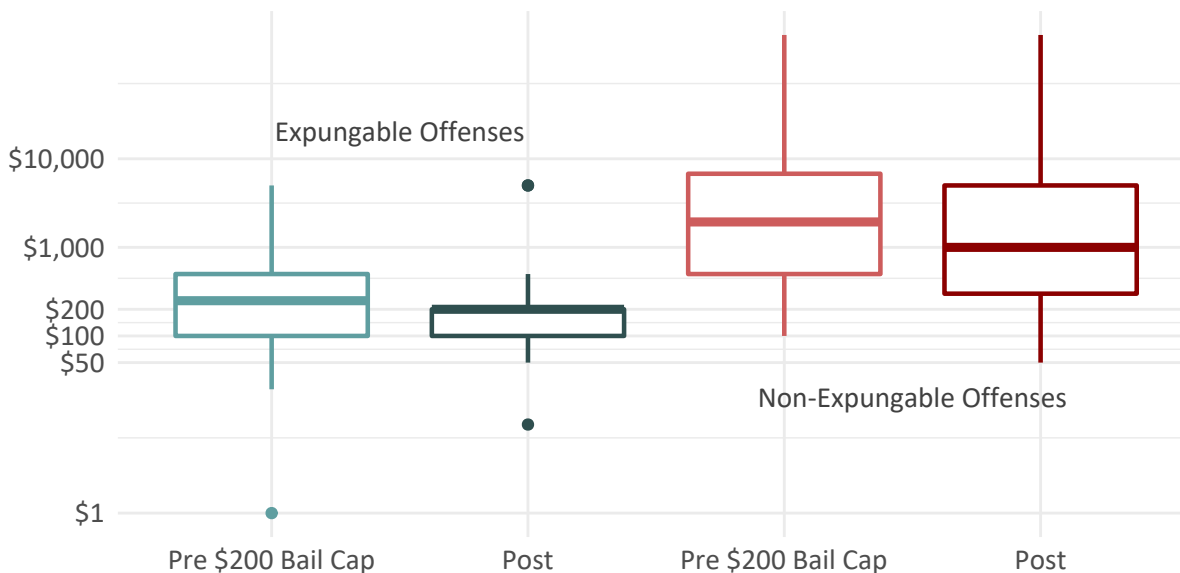
There is limited effect on non-eligible offenses (i.e. the cap does not seem to indirectly inspire judges to impose less bail):

	Cases	Count w/ Bail	Percent Bail	Avg Bail	Median Bail	Max Bail
Pre \$200 Bail Cap	382	90	24 %	\$8,119	\$2,000	\$250,000
Post	498	123	25 %	\$6,950	\$1,000	\$250,000

Note: The \$5,000 max bail for post Act 164 expungeable offenses was assigned to a defendant for the charge of Operation of a Vehicle without the Owner’s Consent. However, this offense was committed while the defendant was out on bail for Burglary, so the bail was set on that (non-expungeable) underlying offense.



Act 164 Cap Has Reduced Bail for Certain Offenses



Expungable offenses are generally non violent, low level misdemeanors.

Conclusion

Arraignments are public, yet little work has been done in Vermont to understand at a system level how bail is assigned and set. This report showed both that at least some defendants do receive bail and also that bail is generally reserved for fairly extreme cases. Most defendants are free to go after an arraignment with no payment.

This analysis is limited in scope due to the paucity of the data. A full investigation of how bail works in Vermont would track defendants throughout court cases. This report does not answer whether bail “works” as we have no information on whether defendants who were assigned bail were more or less likely to appear at their next hearing versus those who were allowed to leave freely. Ultimately it would be important to know whether there are alternatives to bail that could be as effective in ensuring attendance, but there is not enough publicly available data to begin to answer this question.



Appendix

Regression Results:

Table 1: Logit on Bail Assigned

	<i>Dependent variable:</i>				
	any_bail				
	(1)	(2)	(3)	(4)	(5)
def_genderMale	0.23* (0.14)		0.21 (0.14)	0.10 (0.14)	0.05 (0.14)
def_raceBlack		0.21 (0.14)	0.18 (0.14)	0.11 (0.14)	0.11 (0.15)
def_raceAsian		-0.61 (0.41)	-0.66 (0.41)	-0.70* (0.41)	-0.66 (0.41)
def_raceHispanic		1.90*** (0.73)	1.84** (0.73)	1.71** (0.75)	1.79** (0.75)
def_raceOther		0.48 (0.84)	-0.28 (1.10)	0.003 (1.10)	0.08 (1.10)
felony				0.88*** (0.13)	0.91*** (0.13)
prior_appearances					0.10*** (0.03)
Constant	-1.52*** (0.12)	-1.39*** (0.07)	-1.54*** (0.12)	-1.71*** (0.13)	-1.80*** (0.13)
Observations	1,781	1,787	1,781	1,780	1,780
Log Likelihood	-904.58	-902.59	-898.84	-875.18	-869.45
Akaike Inf. Crit.	1,813.16	1,815.17	1,809.69	1,764.37	1,754.91

Note:

*p<0.1; **p<0.05; ***p<0.01



Table 2: Amount of Bail

	<i>Dependent variable:</i>				
	bail_amount				
	(1)	(2)	(3)	(4)	(5)
def_genderMale	51.9 (2,418.8)		-5.2 (2,464.9)	-2,035.9 (2,433.2)	-1,914.3 (2,449.7)
felony				9,716.8*** (2,053.5)	9,640.1*** (2,062.3)
prior_appearances					-236.1 (505.2)
def_raceBlack		1,109.0 (2,398.4)	1,109.7 (2,425.6)	279.1 (2,363.3)	141.3 (2,384.1)
def_raceAsian		-618.8 (7,438.8)	-617.4 (7,488.0)	-1,917.8 (7,280.7)	-1,929.9 (7,288.7)
def_raceHispanic		-2,597.3 (8,769.5)	-2,595.9 (8,818.0)	-2,230.6 (8,568.2)	-2,451.5 (8,590.5)
def_raceOther		-2,447.3 (13,789.2)	-4,145.9 (19,529.0)	106.1 (18,996.2)	-287.1 (19,035.5)
Constant	4,411.6** (2,127.8)	4,247.3*** (1,189.0)	4,251.1* (2,166.9)	2,029.8 (2,157.2)	2,301.5 (2,236.4)
Observations	367	368	367	367	367
R ²	0.000	0.001	0.001	0.1	0.1
Adjusted R ²	-0.003	-0.01	-0.01	0.04	0.04

Note:

* p<0.1; ** p<0.05; *** p<0.01