



# Pre-Trial Release Decision Initial Release Outcome and Bail Amount By Race and Gender

Prepared for the Bail Commission by the

Massachusetts Trial Court  
Department of Research and Planning  
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## Massachusetts Trial Court



- Sample consists of criminal cases arraigned and disposed in District and Boston Municipal Court during the 17-month period following *Brangan v. Commonwealth* (n=149,441).
  - Includes only in-court decisions on bail and release.
  - Defendants with a charge of “fugitive from justice” (n=1,392) were excluded.
- The Supreme Judicial Court held in Brangan that a judge must consider the defendant’s financial resources when setting bail, and must set bail no higher than necessary to ensure the defendant’s appearance.
- In addition to defendant race, the interaction of race and several other variables (i.e., gender, charge severity, offense type, and presence of mandatory charge) was examined for impact on initial release decision and bail amounts.
- Defendants of Hispanic ethnicity were categorized as non-white.



## Overview, All Defendants

Figure 1

### Initial release event

- 80.7% of defendants were released on personal recognizance.
- 16.1% of defendants had bail set at their first pretrial release event.
- 3.2% of defendants were held without bail.

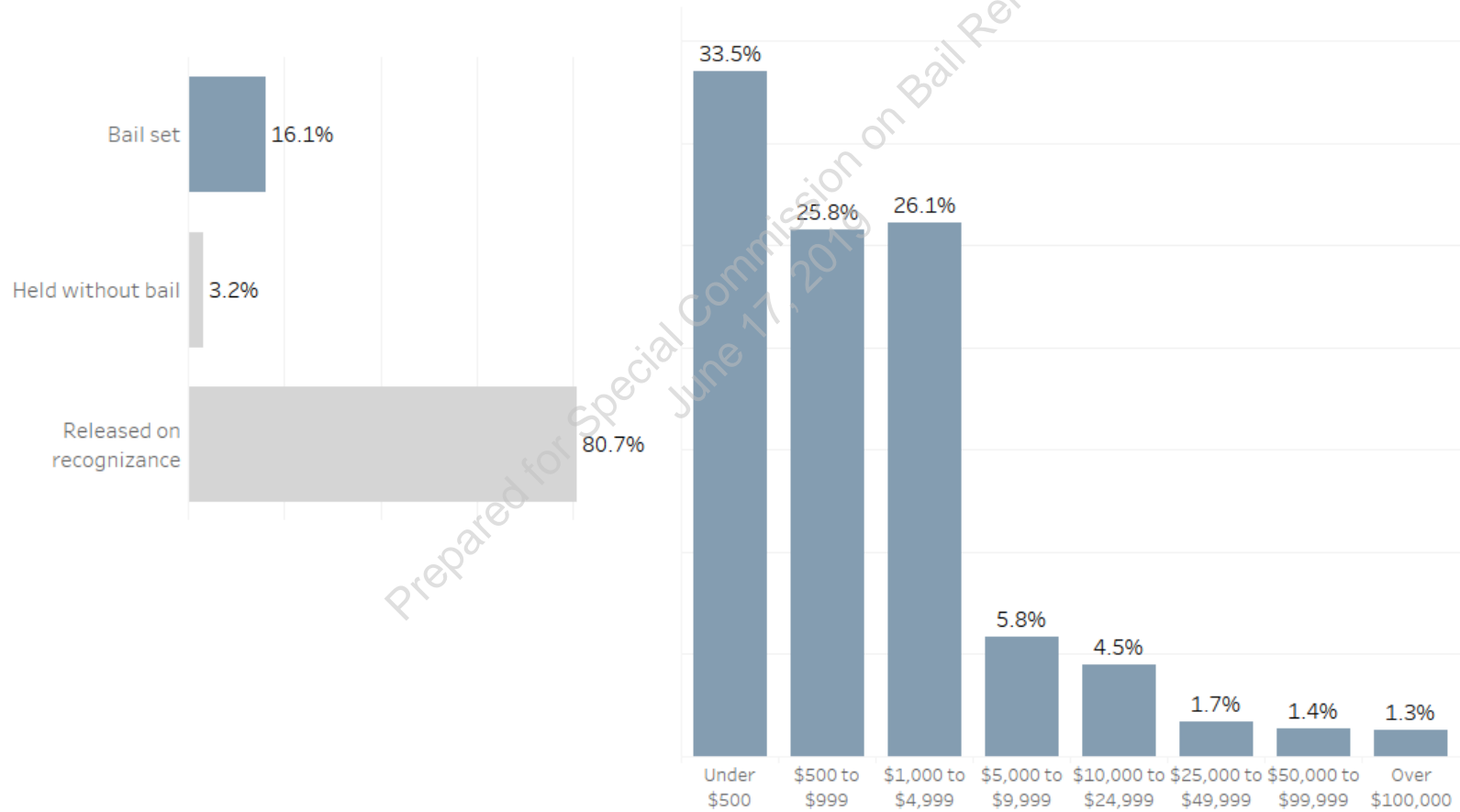
### Of those subject to bail

- One-third of defendants had bail set under \$500.
- 85.4% of defendants had bail set under \$5,000.
- 4.4% of defendants had bail set at \$25,000 or more.

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Figure 1  
Initial Release Decision and Set Bail Amounts





## Overview, Gender of Defendant

Figure 2

### Initial release event

- 89.3% of female defendants and 77.0% of male defendants were released on personal recognizance.
- 9.2% of female and 18.5% of male defendants had bail set at their first pretrial release event.
- 1.5% of female and 4.4% of male defendants were held without bail.

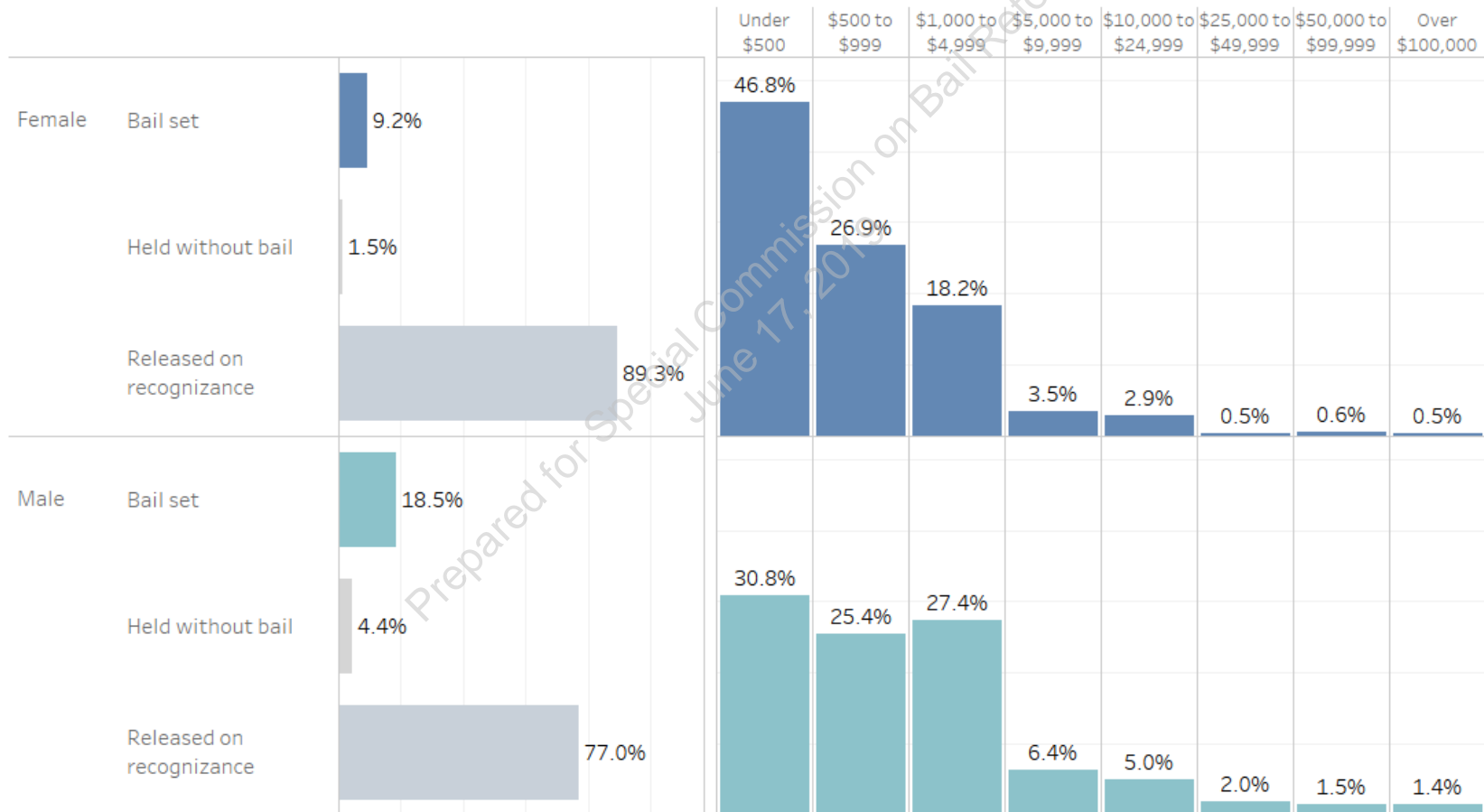
### Of those subject to bail

- 46.8% of female defendants had bail set under \$500 compared to 30.8% of male defendants.
- Twice the proportion of male defendants than female defendants (16.3% vs. 8%) were subject to bail amounts of \$5,000 or more.

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Figure 2  
Initial Release Decision and Set Bail Amounts by Gender





## Overview, Race of Defendant

Figure 3

### Initial release event

- 81.5% of white defendants and 78.0% of non-white defendants were released on personal recognizance.
- 15.4% of white and 18.4% of non-white defendants had bail set at their first pretrial release event.
- 3.1% of white and 3.7% of non-white defendants were held without bail.

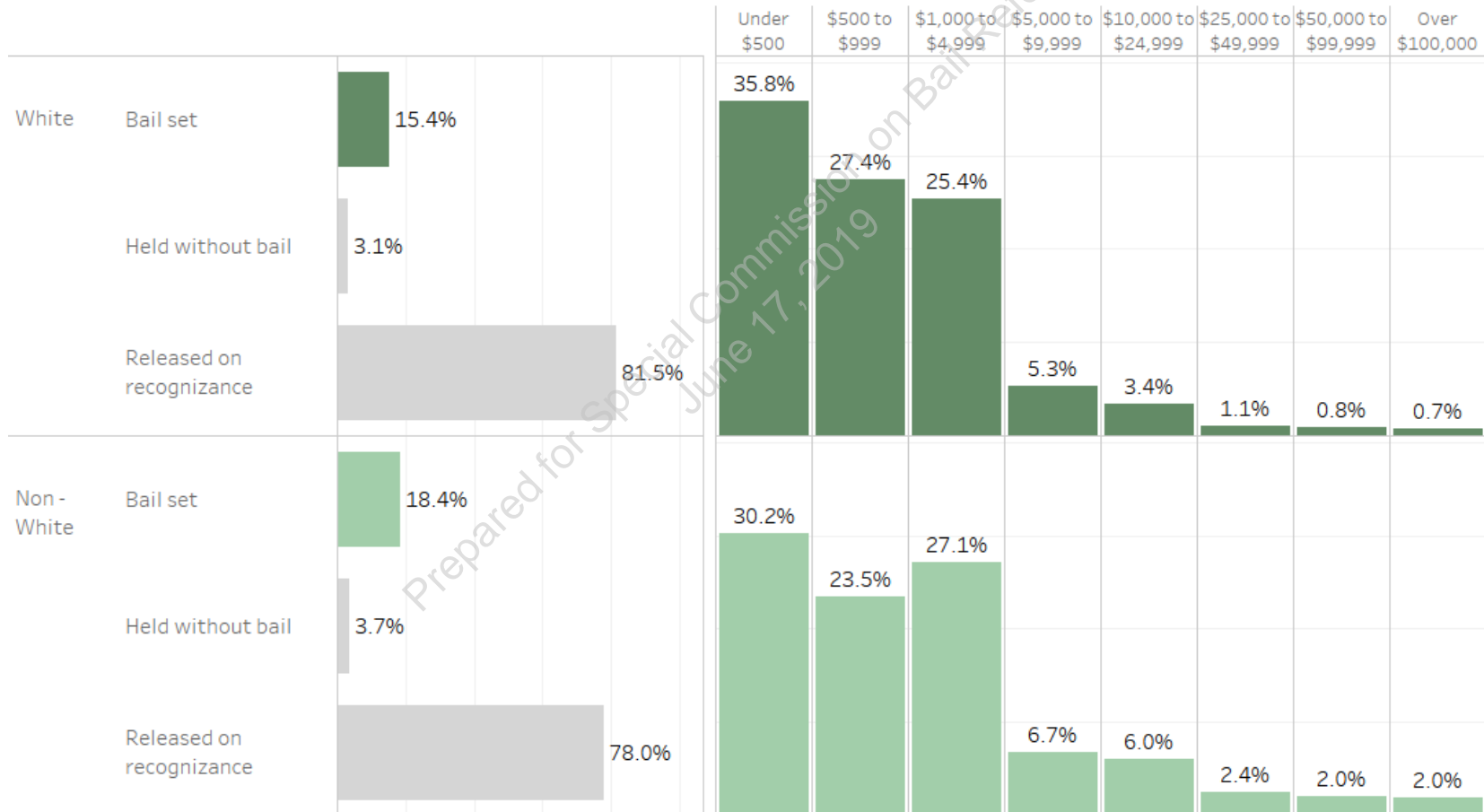
### Of those subject to bail

- Observed bail amounts for white defendants were lower than for non-white defendants.
- 63.2% of white defendants had bail set under \$1,000 compared to 53.7% of non-white defendants.
- 19.1% of non-white defendants compared to 11.3% of white defendants were subject to bail of \$5,000 or more.

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Figure 3  
Initial Release Decision and Set Bail Amounts by Race







## Overview, Charge Severity

Figure 4

### Initial release event

- 20.9% of defendants charged with a serious felony were held without bail compared to 7.5% of defendants charged with a less serious felony, and less than 2.0% of defendants charged with a misdemeanor.
- More than 80% of defendants charged with only a misdemeanor were released on personal recognizance compared to 57.3% of defendants charged with a lower level felony, and 21.6% of defendants charged with a more serious felony.

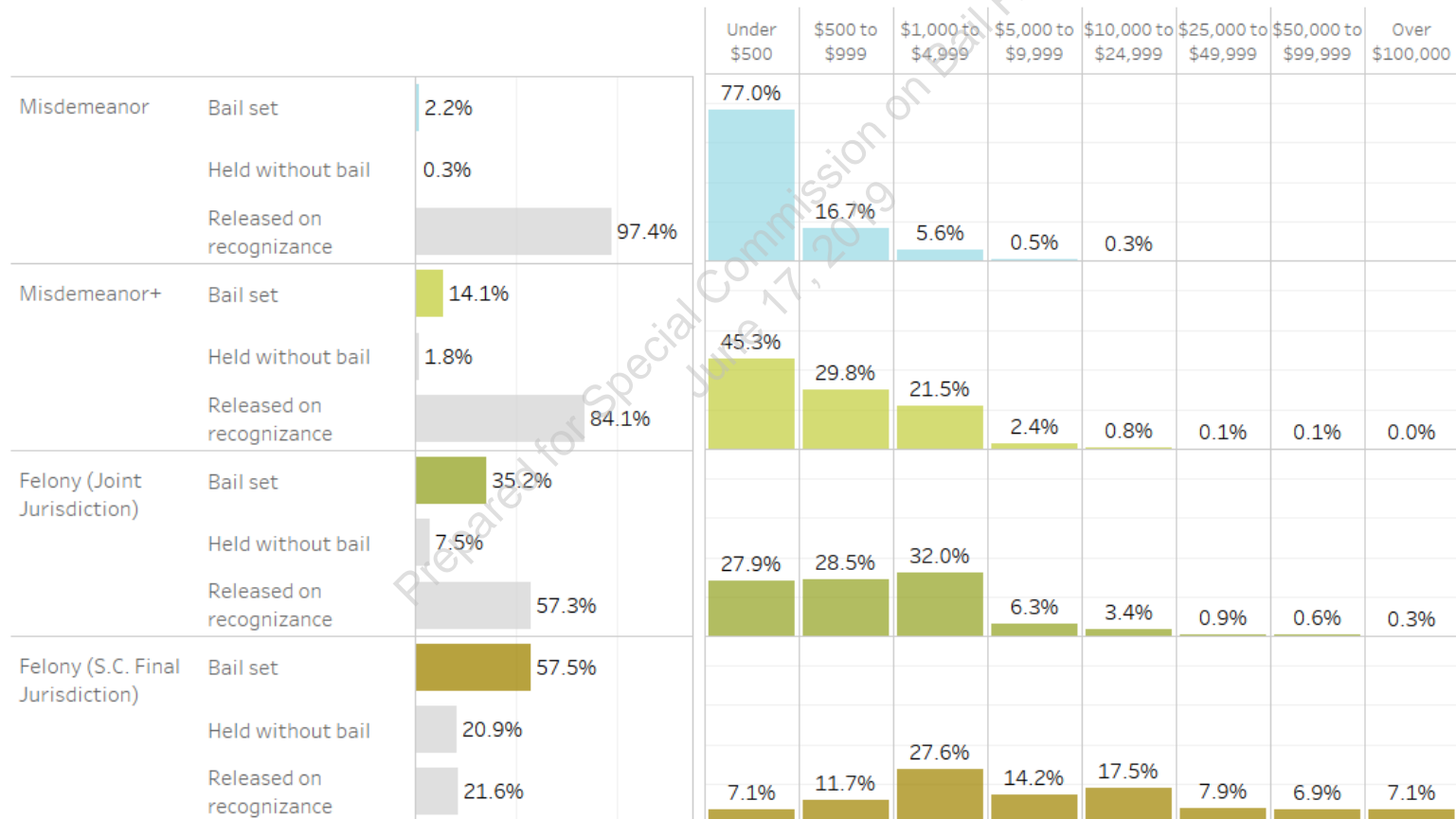
### Of those subject to bail

- Observed bail amounts were lower for defendants charged with less serious offenses.
- Only 7.1% of defendants charged with a more serious felony had bail set under \$500 compared to 61.3% of defendants charged with a misdemeanor of least severity.
- 39.4% of defendants charged with a more serious felony had bail set at \$10,000 or more compared to less than 10% of other defendants.

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Figure 4  
Initial Release Decision and Set Bail Amounts by  
Severity of Most Serious Offense Charged





## Misdemeanor\*, Race & Gender

Figure 5

### Initial release event

- The percentages of defendants released on recognizance ranged from a low of 96.8% of white males to a high of 98.2% of non-white females.

### Of those subject to bail

- A greater proportion of female defendants, both white and non-white, were subject to bail amounts under \$500.
- Within gender, bail amounts were similar for white and non-white defendants.

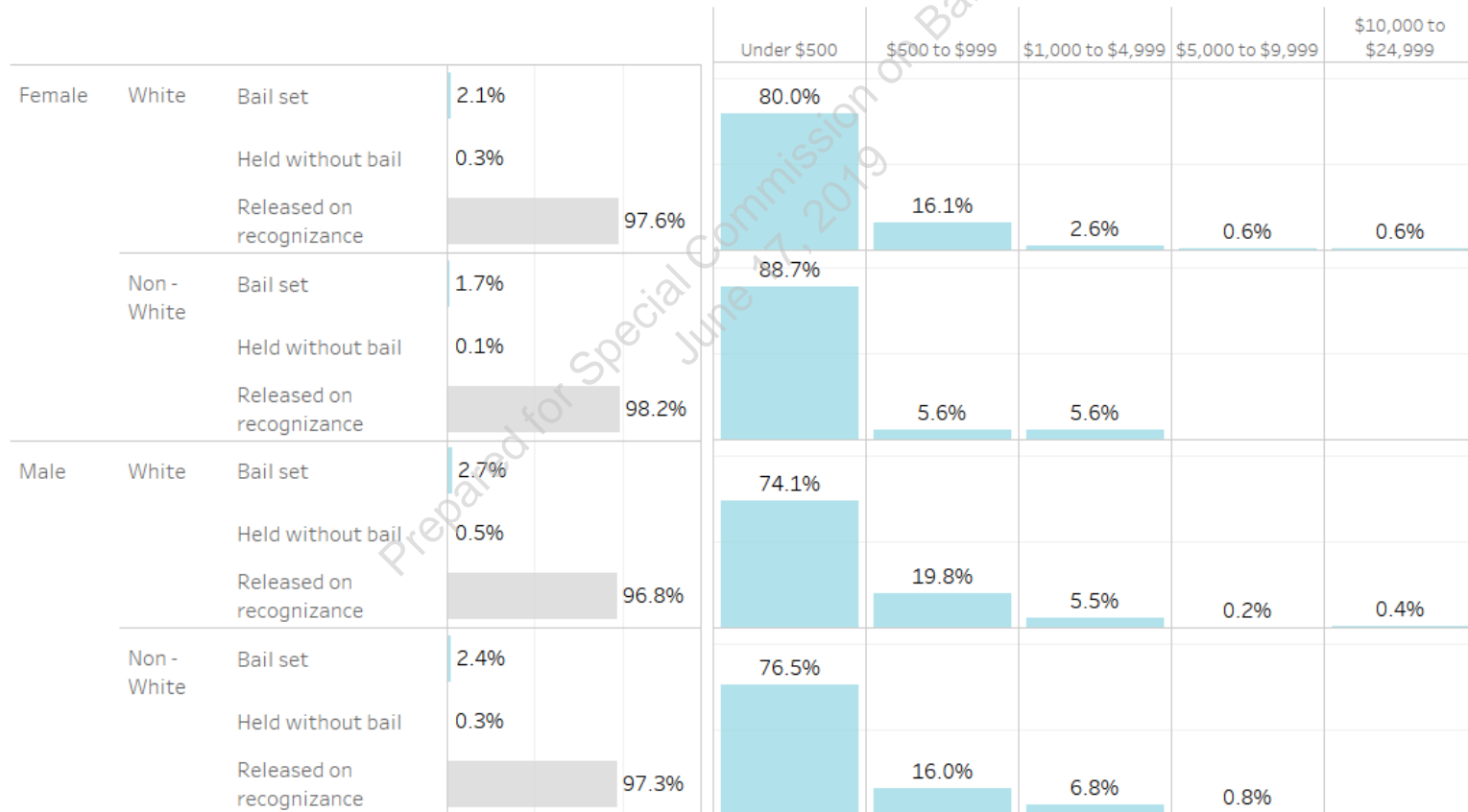
\*Misdemeanor: Punishable by 100 days or less imprisonment.

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Figure 5

Initial Release Decision and Set Bail Amounts by  
Misdemeanor - (Punishable 100 days or less imprisonment)





## Misdemeanor+, Race & Gender

Figure 6

### Initial release event

- Higher percentages of male defendants charged with a misdemeanor+ were held without bail or subject to bail.
- A greater proportion of female defendants were released on recognizance.

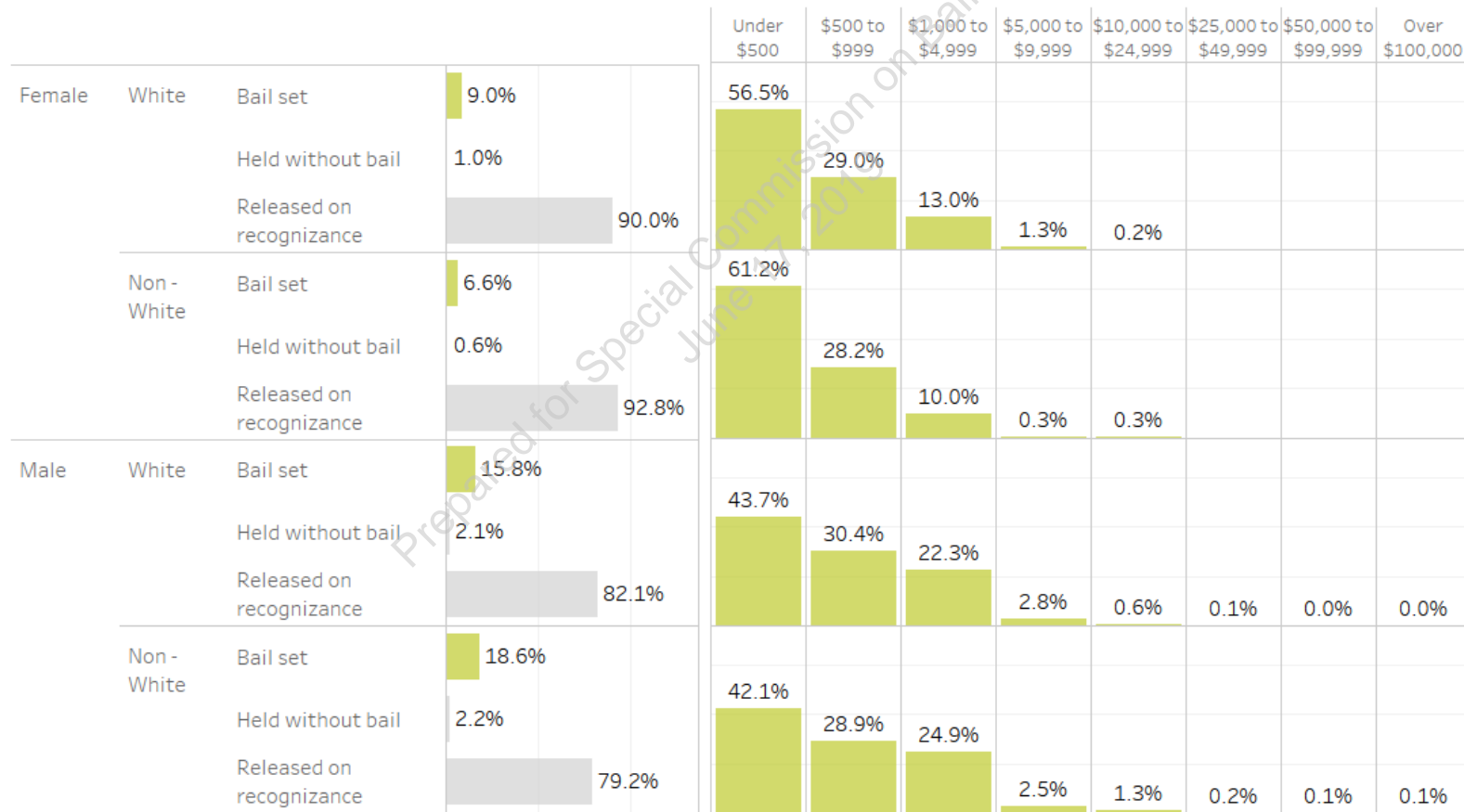
### Of those subject to bail

- A greater proportion of male defendants, both white and non-white, were subject to bail amounts of \$1,000 or more.
- A greater proportion of female defendants, both white and non-white, were subject to bail amounts under \$500.
- Within gender, bail amounts were similar for white and non-white defendants.

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Figure 6  
Initial Release Decision and Set Bail Amounts by  
Misdemeanor + (Punishable by more than 100 days imprisonment)



Misdemeanor+ : Misdemeanors punishable by more than 100 days imprisonment.



## Felonies (Joint Jurisdiction), Race & Gender

Figure 7

### Initial release event

- Approximately 9% of male defendants were held without bail compared to 3% of female defendants.
- Three-quarters of female defendants and one-half of male defendants were released on recognizance.
- The percentage of defendants subject to bail ranged from a low of 21.5% (non-white females) to a high of 41.9% (non-white males).

### Of those subject to bail

- Male defendants, both white and non-white, were subject to higher bail amounts than female defendants.
- Within gender, the distribution of bail amounts was similar for white and non-white defendants.

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Figure 7  
Initial Release Decision and Set Bail Amounts by  
Felony (Joint Jurisdiction)

			Under \$500	\$500 to \$999	\$1,000 to \$4,999	\$5,000 to \$9,999	\$10,000 to \$24,999	\$25,000 to \$49,999	\$50,000 to \$99,999	Over \$100,000
Female	White	Bail set	22.6%							
		Held without bail	3.3%	38.2%	33.4%	23.9%				
		Released on recognizance	74.2%			2.8%	1.5%		0.2%	
Non - White	Bail set	21.5%	47.0%							
		Held without bail	2.7%		25.8%	21.9%				
		Released on recognizance	75.8%			2.4%	2.4%	0.4%		
Male	White	Bail set	37.5%							
		Held without bail	8.7%	26.4%	29.1%	33.0%				
		Released on recognizance	53.9%			6.8%	3.1%	0.9%	0.4%	0.4%
Non - White	Bail set	41.9%								
		Held without bail	9.1%	25.2%	27.0%	34.0%				
		Released on recognizance	49.0%			7.1%	4.0%	1.3%	1.0%	0.4%





## Felony (SC Final Jurisdiction), Race & Gender

Figure 8

### Initial release event

- More than 20% of male defendants charged with a serious felony were held without bail compared to 10% of female defendants.
- Nearly 10% more white defendants were released on recognizance than non-white defendants, regardless of gender.
- The percentage of defendants subject to bail ranged from a low of 44.0% (white females) to a high of 64.1% (non-white males).

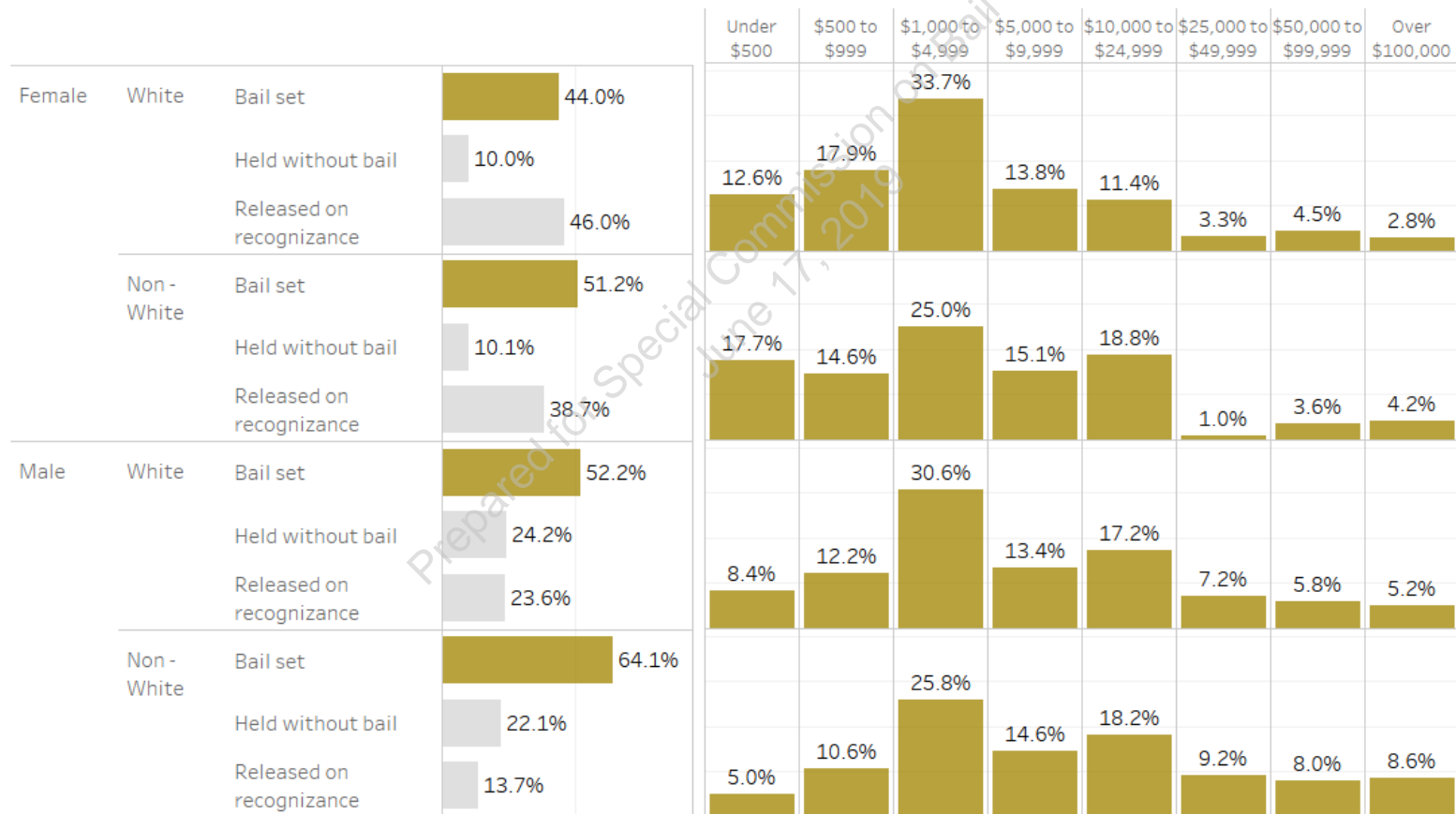
### Of those subject to bail

- Within gender, the general distribution of bail amounts was similar for white and non-white defendants.
- Still, bail amounts for non-white defendants, both male and female, were observed to be slightly higher than bail amounts for white defendants.
- 35.8% of white females were subject to bail of \$5,000 or more compared to 42.7% of non-white females. Among white and non-white males, the percentages of defendants subject to bail of \$5,000 or more were 48.8% and 58.6%, respectively.

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Figure 8  
Initial Release Decision and Set Bail Amounts by  
Felony (SC Final Jurisdiction)



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Felony (SC Final Jurisdiction) charges were isolated for further analysis.

- Type of offense (classified by most serious charge) and the presence of charge(s) associated with a mandatory minimum term of incarceration were considered.
- Differences in initial release outcome and set bail amounts varied for white and non-white defendants charged with drug offenses (no associated mandatory) and weapon offenses.



Felony (SC Final Jurisdiction) and Race  
Drug and Weapon Offenses, No Mandatory  
Figure 9

Drugs

- Slightly greater proportion of white defendants were released on recognizance.
- Distribution of set bail amounts varied by race of defendant, with non-white defendants subject to higher bail amounts.
- 18.6% of non-white defendants were subject to bail amounts of over \$100,000 compared to 4.3% of white defendants.

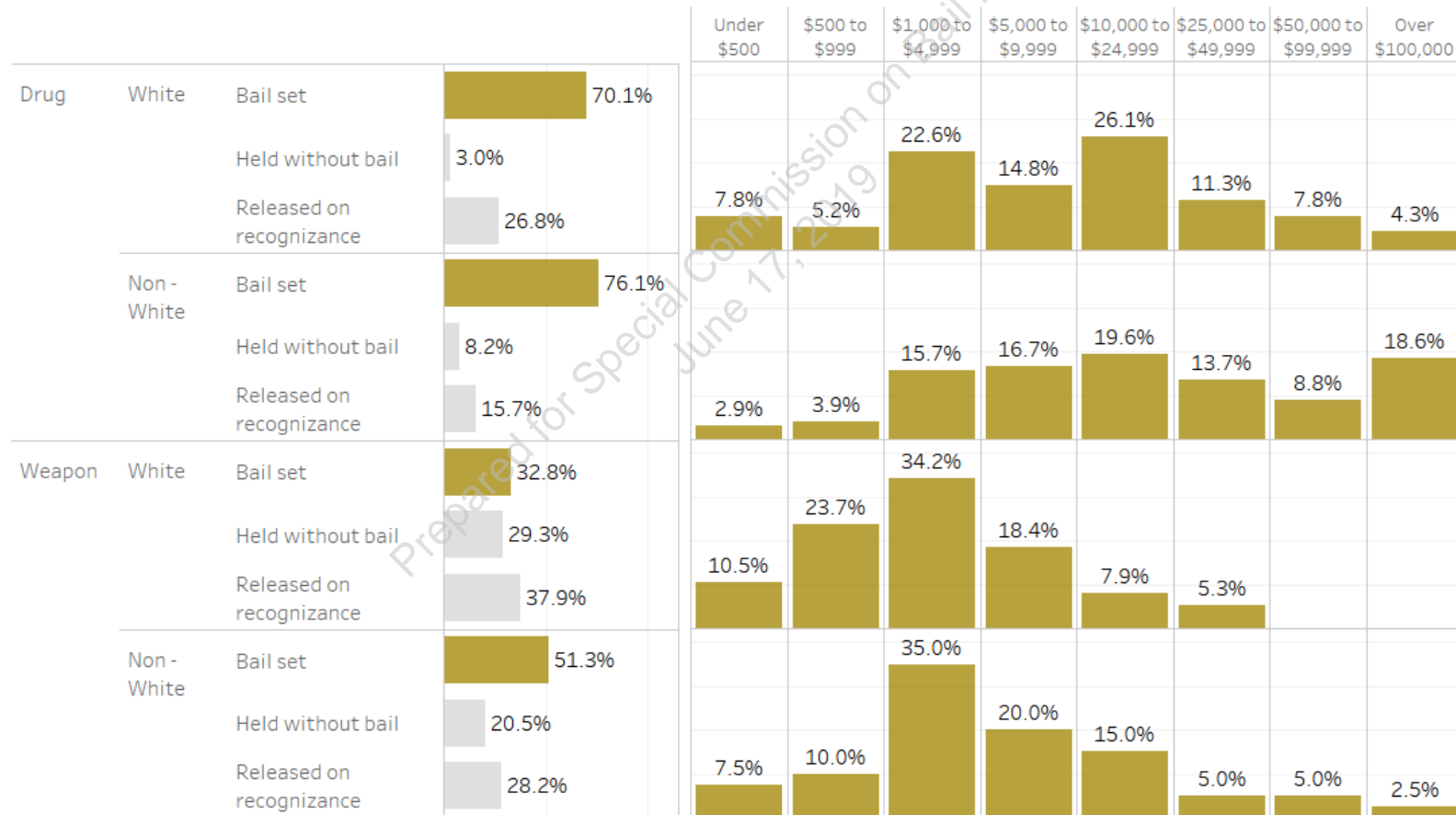
Weapons

- Initial release decision varied by defendant race, with a greater proportion of white defendants released on recognizance or held without bail.
- Distribution of bail amount was similar by race, though overall, observed bail amounts for non-white defendants were higher than bail amounts for white defendants.
- 31.6% of white defendants had bail set at \$5,000 or more compared to 47.5% of non-white defendants.

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Figure 9  
Initial Release Decision and Set Bail Amounts by  
Selected Offense Types (No Associated Mandatory Charge)



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## Felony (SC Final Jurisdiction) and Race Drug and Weapon Offenses, Associated Mandatory Charge Figure 10

### Drugs

- The outcome of initial release decisions and set bail amounts were similar for white and non-white defendants.

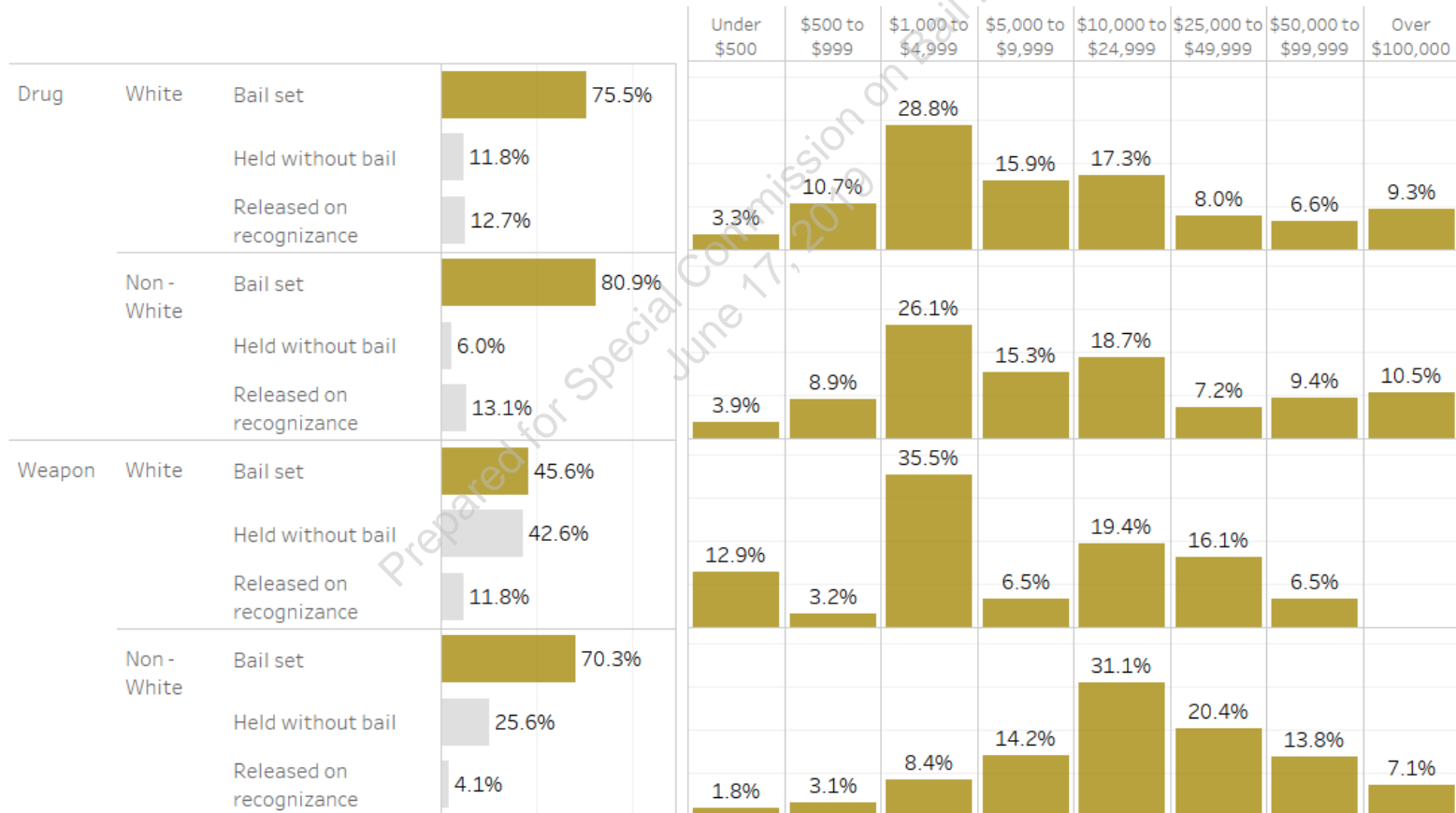
### Weapons

- A greater proportion of white defendants were held without bail than non-white defendants (42.6% vs. 25.6%).
- Non-white defendants, in contrast, were subject to higher bail amounts.

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Figure 10  
Initial Release Decision and Set Bail Amounts by  
Selected Offense Types (At Least One Associated Mandatory Charge)





## Summary

- Charge severity, gender of defendant, offense type, and possible mandatory sentence, proved to be important considerations when analyzing first release decisions and bail amounts by race.
- In general, a greater proportion of female defendants were released on recognizance and subject to lower bail amounts than male defendants.
- White defendants charged with a serious felony (SC final jurisdiction) had slightly higher rates of release on recognizance and were subject to slightly lower bail amounts.
  - More specifically, further analysis identified two offense categories – drugs and weapons – for which there was significant disparity by race in rates of recognizance and bail amounts.
- Among defendants charged with a less serious felony (joint jurisdiction) or misdemeanor, rates of recognizance and distribution of bail amounts did not vary significantly by race.