



Written Testimony Submitted to the Texas House of Representatives Committee on Criminal Jurisprudence

Regarding H.B. 1323 (Murr) & H.B. 2020 (Kacal)

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Chairwoman Collier, Vice Chairman Zedler and Members of the Criminal Jurisprudence Committee:

Texas' pretrial justice system is in crisis. We greatly appreciate this Committee's attention to the issue and urge your support of legislation that would implement legal and evidence-based practices. While both H.B. 1323 and H.B. 2020 contain some positive changes, neither would implement the reforms necessary to both maximize public safety and court appearance rates, while ensuring the bail system complies with legal requirements recently outlined by the courts. We urge the Committee members to continue to work with the authors on improvements to the bills to achieve these goals.

With limited exceptions, Texas counties consistently release people who have not been convicted of any crime according to whether they can afford money bond. As a result, people who present a significant risk to public safety or flight can essentially buy their release. On the other hand, people who pose no threat to public safety are frequently detained because they do not have even as little as \$50 or \$100 dollars for bond. Release hinges on wealth, not safety. Passing comprehensive legislation to implement best practices in Texas' pretrial justice system would be the most important single step that this legislature could take to immediately improve the safety of Texas communities.

While the public safety problems inherent in our current system are in and of themselves sufficient reason for reform, the U.S. Court of Appeals for the Fifth Circuit has also ruled that Harris County's bail system is unconstitutional. A federal district court has similarly ruled in favor of plaintiffs challenging Dallas County's bail system on similar grounds to the Harris County lawsuit. Galveston County is also being sued and a federal judge had denied defendants' motion to dismiss that lawsuit. Most Texas county pretrial justice systems mirror the pretrial justice systems in Harris, Dallas and Galveston County that are successfully being challenged through litigation. Avoiding future litigation and protecting counties from having to operate under federal court injunctions will require the legislature to address the constitutional failings of the current system.

In order to achieve public safety benefits and avoid future litigation, any legislation that is passed must comprehensively address the systemic shortcomings. Simply implementing a risk assessment tool without additional reforms is not enough. Further, some reforms that have been proposed in both H.B. 1323 and H.B. 2020 could actually create greater problems and hinder progress being made on the local level. While we urge you to take action on this issue, we also urge you to ensure that any legislation approved by the Committee is based on legal and evidence-based practices, containing the key elements that will actually reap public safety benefits and avoid future litigation. This document outlines information regarding the current system, why reform is necessary, the key elements of reform, and how both H.B. 1323 and H.B. 2020 should be improved to incorporate those key elements.

TEXAS' CURRENT BAIL SYSTEM

Money bond is usually required for pretrial release in Texas, meaning someone must either post a cash bond themselves or pay a bail bondsman to post a surety bond, which is typically 10% of the bond amount. People who cannot afford the bond amount or bail bond fee usually remain detained until disposition of their case. Notably, money bond disadvantages low-income Texans even when they can afford to pay a bail bondsman to secure their release, as that fee is never returned, regardless of whether they show up for court or not. On the other hand, people with enough resources to post their own cash bond will receive their money back if they appear in court as ordered.

Oftentimes, the amount of money bond assigned by the magistrate is based upon a bond schedule, which assigns a dollar amount based on each type of offense. **Bond amounts, even for misdemeanor offenses, can be unaffordable for many people.** For example, one study documented the average bond amount in Galveston County was approximately \$1400 for a Class B misdemeanor and \$2300 for a Class A misdemeanor.ⁱ It is not uncommon for someone to be unable to afford bond and remain in jail simply because they do not have as little as \$50 or \$100. In fact, a 2017 study found that 15% of defendants in Tarrant County are held on a bond amount of \$2000 or less until disposition of their case, even though the majority of them would be classified as low-risk.ⁱⁱ And 3% of defendants are held on a bond of \$500 or less until disposition.ⁱⁱⁱ In sum, that means nearly 1 in 5 people in Tarrant County are held until disposition of their case on a bond of \$2000 or less.

Texas law permits magistrate judges to release people on personal bond, without the upfront payment of any money except for a personal bond fee in the amount of \$20 or 3% of the bond amount.^{iv} Certain serious offenses are not eligible for personal bond unless it is granted by the district judge with jurisdiction over the case. **Yet, even in lower level cases, personal bonds are rarely used in most counties.** For example, Dallas County releases about 3% of defendants on personal bond^v; El Paso County releases approximately 5% on personal bond^{vi}; Tarrant County releases approximately 6%.^{vii}

Compare those small percentages of personal bond release in a money-based system with jurisdictions that have implemented risk-based pretrial successfully. Travis County, for example, has implemented a validated risk assessment tool and based on a pretrial assessment, releases many low-risk people on personal bond. As a result, the percentage of people released on personal bond in Travis County is 10 times higher than many other counties at around 59%.^{viii} Experiences in other states that have moved away from money bail have demonstrated similar percentages are attainable. For example, Kentucky releases about two-thirds of individuals on non-financial bond, yet has maintained public safety and court appearance rates.^{ix}

Also troubling is the length of time that people spend in Texas jails even when charged for low-level offenses, many of which could be charged through citation instead of arrest. Our analysis of county jail bookings showed that more than 24,000 people charged with either a Class C or Class B misdemeanor and nothing more serious spent more than 3 days in jail over the course of a single year in 11 counties for which we had data. Of these, about half (i.e., more than 12,000 people charged with a Class C or Class B misdemeanor and nothing more serious) spent more than 10 days in jail in those counties. Existing research shows that this three-day mark is significant in terms of the connection between pretrial detention and rearrest. A study of defendants in Kentucky jails found low-risk defendants held at least 2 to 3 days were almost 40% more likely to commit a new crime before trial than a low-risk defendant held no more than 24 hours.^x Further, the longer low-risk

defendants were held, the more likely they were to reoffend. The point is that even a couple of additional days in jail increases one's risk of rearrest. Each day in jail is a day of missed work, a day without access to substance abuse and mental health treatment, a day away from family and children. Counties are not releasing people as quickly as they need to, often because people cannot afford the bond set in their case.

WHY TEXAS' PRETRIAL JUSTICE SYSTEM NEEDS IMPROVEMENT

- **Improve Public Safety:** By giving judges the information and tools they need to make better informed decisions about pretrial release, they could keep dangerous people in jail and release non-dangerous people to their families, ultimately keeping all Texans safer. A summary of research about maximizing public safety through bail reform is attached, entitled "How Bail Reform Will Make Texas Safer."
- **Ensure Equal Justice:** All Texans, rich or poor, are entitled to justice, and the criminal justice system should not punish the poor more harshly than the wealthy simply on account of their poverty. The wealth-based pretrial detention in our current system leads to worse outcomes for people who cannot afford bond. The fact that someone was detained pretrial means that person is more likely to be convicted, more likely to be sentenced to jail or prison, and more likely to receive a lengthier sentence.^{xi} In short, people are punished more harshly because they are low-income. Further, studies have repeatedly shown that black individuals are less likely to be released pretrial and more likely to have higher bail amounts set in a money-based bail system. Moving to a risk-based system would reduce racial disparities.
- **Save Taxpayer Dollars:** Texas counties are spending nearly \$1 billion annually to house people who have not been committed of any crime.^{xii} If Texas were to reduce more people on personal bond, the cost savings resulting from reducing unnecessary jail bed days will more than make up for any potential increases in pretrial supervision.^{xiii}
- **Improve Court Appearance Rates:** Research has demonstrated money bail is unnecessary to ensure people return to court, and in fact small changes like text reminders can greatly increase court appearance rates. A summary of research around court appearance rates is attached, entitled "How Bail Reform Can Lead to Improved Court Appearance Rates."
- **Avoid Future Litigation:** The opinion by the U.S. Court of Appeals for the Fifth Circuit makes it clear that Harris County's current bail system violates people's rights to due process and equal protection. Moreover, the opinion makes it clear that there are certain procedures that are constitutionally necessary for Harris County -- or any Texas county -- to implement in order to protect due process rights when setting bail. These include (i) an individualized, case-by-case evaluation of a defendant's circumstances (ii) including an inquiry into ability to pay when setting monetary bail and (iii) a hearing on eligibility for pretrial release within 48 hours. Dallas County and Galveston County are also involved in litigation with judges ruling in plaintiffs' favor so far. Until the legislature acts to create a constitutional system, counties will continue to be sued.
- **Voters support pretrial reform:** When it comes to pretrial justice, a majority of Texas voters support reforms that align with best practices. A recent poll that Texas Appleseed released in partnership with the national Pretrial Justice Institute and Right on Crime demonstrates that Texas voters overwhelmingly support a pretrial justice system in which decisions are based on risk, not income.

More than 7 in 10 Texas voters support judges assessing public safety risk when determining pretrial release. Eight in 10 Texas voters prefer issuing citations to people accused of low-level, nonviolent offenses, as opposed to arresting them and holding them in jail before they've been convicted. A summary of those polling results is attached to this document.

KEY ELEMENTS TO IMPROVING PRETRIAL JUSTICE SYSTEM

In short, the following are key components of legislation that would most effectively reform the system and bring it into constitutional compliance.

- **Make prompt individualized determinations about pretrial release based on risk:** Judges should make individualized decisions about release based on an individual's risk of committing a new crime if released and risk of flight—not by assigning a money bond amount based on the offense charged. Money bond undermines the goal of community safety and leads to people being detained for no other reason than their inability to pay, while allowing the dangerous but wealthier individuals to buy their freedom.
- **Maximize pretrial release through personal bonds:** The majority of people could be safely released pretrial on personal bond, either without conditions (aside from court date reminders) or with the least restrictive conditions necessary to ensure court appearance and public safety. More personal bonds means more low-risk people released back their families and communities and less wealth drained from low-income communities that must pay an unrefundable fee to a bail bondsman to post bond. To reliably increase the use of personal bond across counties while still maintaining judicial discretion, the legislature should establish in state law a rebuttable presumption that a person charged with a crime is entitled to release on personal bond until trial.
- **Ensure due process protections:** Defendants are constitutionally entitled to notice of the hearing that will determine their eligibility for pretrial release and what will be at issue at that hearing; an opportunity to be heard and submit evidence at a hearing within 48 hours of arrest; and a reasoned decision by an impartial decisionmaker. Defendants should also have the right to counsel at these initial magistrations to ensure that their rights are protected and to advocate for the appropriate bond and conditions of release. Additional due process protections are required in any case where a judge orders a defendant held without bail.
- **Use risk assessments wisely:** Judges needs information about each defendant if making and individualized release decision, and validated risk assessment tools can provide helpful information to a judge when making an individualized determination about release and the conditions of release that are appropriate in a particular case. At the same time, no person should be detained solely based on a risk assessment score, and counties should be required to select a validated tool (meaning that it has been proven to accurately predict risk of new criminal activity and failure to appear) that will not increase racial disparities. More guidance for using risk assessment tools property is attached entitled "How Pretrial Risk Assessments Reduce Disparities and Improve Safety."
- **Require ability to pay evidence and inquiry for any money bond:** Money bonds are only appropriate if a judge cannot reasonably ensure public safety and court appearance through a personal bond and

conditions of release. When setting a money bond amount, it is essential that the judge collect information about the individual's ability to pay a bond and consider that information. No individual should be held in jail for no other reason than their inability to pay the bond amount. To protect against such a constitutional violation, a person should be entitled to an adversarial hearing to reconsider their bond if they have a money bond amount set yet have remained detained.

- **Ensure transparency:** Any legislation should clarify that proceedings in which bail is set must be open to public viewing. It is also essential that courts maintain data regarding risk assessment scores, pretrial release and bond decisions, and rates of new criminal activity and failure to appear. This data must also be made publicly available, providing transparency to the public and to allow for monitoring of any changes to the system.

NECESSARY IMPROVEMENTS TO H.B. 2020 and H.B. 1323

With a system so broken, comprehensive legislation to address the problem is needed. While there are positive elements of H.B. 1323 and H.B. 2020, neither bill contains all of the key elements outlined above or goes far enough to create a system that will ensure protection of people's equal protection and due process rights along with implementation of best practices. Furthermore, both bills contain particular provisions that could potentially lead to even more people being held in jail pretrial. The following are recommendations that would improve the bills and incorporate some of the key elements of reform:

- **Limit preventive detention to people charged with serious offenses (H.B. 1323):** H.B. 1323 expands preventive detention (i.e., the ability to order a person without bail) in an overly broad manner, allowing judges to detain until trial even those who are charged with low-level, nonviolent offenses. If preventive detention is to be expanded, only those people who are charged with serious crimes should be eligible. Furthermore, the timeline for reviewing a preventive detention order should be sped up, as it could be potentially 2 weeks before an adversarial hearing under the current bill. (Note: H.B. 2020 does not expand preventive detention authority.)
- **Ensure legislation does not require unnecessary risk assessments (H.B. 1323 & H.B. 2020):** Both bills require a risk assessment be conducted and considered for all defendants booked into jail on a Class B misdemeanor or more serious charge. However, many people are being booked into the jail on such low-level charges that no risk assessment is necessary. The Harris County courts have recently implemented by standing order a rule allowing for automatic release of people charged with certain types of misdemeanor charges. Nothing in this legislation should prevent counties from implementing similar procedures that allows for automatic release of people whom judges have determined should not be detained pretrial under any circumstances.
- **Provide for presumptive release on personal bond (H.B. 1323 & H.B. 2020):** H.B. 1323 creates a rebuttable presumption of release on some form of bond whether it is money bond or personal bond with conditions attached. H.B. 2020 does not speak to any such presumption of release. However, experience from other jurisdictions demonstrates that the majority of people can safely be released on personal bond. Personal bond is a preferable option, because counties would avoid the possibility of detaining someone for no other reason than their inability to pay money bail and those charged with crimes could avoid having to pay an unrefundable 10% fee to a bail bondsman. Both bills should make clear that there is a presumption of release on personal bond for people charged with offenses that are eligible for personal bond under existing article 17.03. The magistrate would retain discretion to

override this presumption if personal bond could not reasonably ensure public safety or court appearance. Additionally, judges should be able to impose conditions of release on people, but only the least restrictive condition necessary to ensure public safety and court appearance, since defendant has not yet been convicted of any crime. H.B. 1323 requires only the “least restrictive conditions” be imposed, but H.B. 2020 does not.

- **Ensure risk assessment is not biased and collect data to assess risk assessment accuracy (H.B. 1323 & H.B. 2020):** Both bills require the implementation and use of risk assessment tools in making pretrial release decisions; such tools can provide useful information to judges. The bills need to specify that the tool used and all data and scoring needs to be transparent to the public and the parties to each case. And the legislation should require data collection to ensure that bias does not result after implementation and to allow counties to revalidate the tool on their local population periodically.
- **Require an ability to pay inquiry for all and a bail review hearing for those held on money bond (H.B. 1323 & H.B. 2020):** While ability to pay is one of several factors that is to be considered under current law, it typically is not. This legislation should make it clear that judges must solicit information on ability to pay and use it to inform the bond decision. Furthermore, no person should be held for the sole reason that they are unable to make bond, and if a person continues to be detained after a judge has set a monetary bond, it should be presumed that person is unable to pay the bond amount. In such a case, the legislation should provide procedures for reconsideration of the bond amount.
- **Eliminate provision requiring district court judges to set bond in felony cases (H.B. 2020):** It would be a huge increase in workload for district judges to have to set bond within 48 hours in all felony cases, potentially leading to delays of hearings beyond the constitutionally mandated 48 hour timeframe. Further, it is an unnecessary change; well-trained magistrate judges with access to sufficient information about the defendant are capable of making decisions about bond. (Note: H.B. 1323 does not contain a similar provision.)
- **Rely on Texas Judicial Council for tasks assigned to newly formed Bail Advisory Commission (H.B. 2020):** There is no need to create a separate Bail Advisory Commission when the Texas Judicial Council, which is composed of both gubernatorial and legislative appointees, as well as judges from all levels of courts, has already been studying this issue for several years. The Office of Court Administration at the recommendation of the Judicial Council has already developed a risk assessment tool and undertaken much of the work assigned to the Commission, so the Commission’s work would be duplicative in many respects.
- **Ensure magistrations and bail review hearings are public (H.B. 1323 & H.B. 2020):** Counties routinely close magistrations to the public, despite the constitutional right to a public trial. The bills should clarify that magistrations and other hearings related to bail decisions are to be open to the public.

CONCLUSION

Reform of Texas' pretrial justice system is essential. We urge the Committee to thoughtfully consider the bills that have been proposed and to work with the authors to make improvements to ensure the system designed by these bills would actually maximize public safety and court appearance, while complying with legal requirements recently outlined by the courts. We also look forward to working with the authors and hope we can serve as a resource moving forward.

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ⁱ Tony Fabelo et al., Council of State Governments Justice Center, *Galveston Co. Justice System Assessment: Preliminary Findings for Review by Local Officials* (Jun 2017).

ⁱⁱ Public Policy Research Institute at Texas A&M University, *Liberty & Justice: Pretrial Practices in Texas* (2017).

ⁱⁱⁱ *Id.*

^{iv} Texas Code of Crim. Pro. art. 17.03.

^v Complaint, *Daves v. Dallas Co.*, Case 3:18-cv-00154-N (N.D. Tex. Jan. 30, 2018).

^{vi} Tony Fabelo et al., Council of State Governments Justice Center, *El Paso County Uniform Recidivism Measure Project: Analysis of Trends and Key Policies* (2018).

^{vii} PPRI Report, *supra* n. ii.

^{viii} *Id.*

^{ix} *Pretrial Services*, Administrative Office of the Courts, Kentucky Court of Justice, *Pretrial Reform in Kentucky* (2013).

^x Christopher T. Lowenkamp et al., Laura & John Arnold Foundation, *Hidden Costs of Pretrial Detention 10-11* (2013).

^{xi} Christopher T. Lowenkamp et al., Laura & John Arnold Foundation, *Investigating the Impact of Pretrial Detention on Sentencing Outcomes 10-11* (2013)

^{xii} Chief Justice Nathan Hecht, State of the Judiciary Address to the 86th Legislature (Feb. 6, 2019).

^{xiii} The Office of Court Administration estimates that at least \$250 million is wasted jailing low-risk individuals who could safely be released. Approximately \$190 million local dollars could be saved by moving to a risk-based pretrial release system, which accounts for the money that is needed for implementation. See Ryan Autullo, *Texas Judicial Council says bail reform could save \$190 million per year*, *Austin American-Statesman* (Nov. 11, 2016), available at <http://www.mystatesman.com/news/texas-judicial-council-says-bail-reform-could-save-190-millionyear/mBuiZS4lwp1Ql2TXsypW1N/>.



BAIL REFORM WILL MAKE TEXAS SAFER

Texas judges should make decisions about who is released from jail pretrial and who is detained based on their potential risk to the safety of the public and the safety of the victim. Basing the decision on risk rather than whether a person can afford bail will lead to safer Texas communities.

In our current bail system, public safety suffers on account of two failures. First, dangerous people who can afford money bond are routinely released. Second, on the other end of the spectrum, non-dangerous, low-risk people are unnecessarily jailed, separating them from their families and support systems and causing them to lose employment, all leading to an increased chance of their rearrest.

Bail reform would solve both problems. By giving judges the tools they need to make better informed decisions about pretrial release, they could keep dangerous people in jail and release non-dangerous people to their families - and ultimately keeping all Texans safer.

IMPLEMENTATION OF RISK ASSESSMENT TOOLS AND RISK-BASED RELEASE LEADS TO FEWER SERIOUSLY DANGEROUS PEOPLE BEING RELEASED, REDUCING CRIME RATES.

- Horrible crimes committed by people who paid the money bond amount set in their case could be avoided if judges in those cases had better information about their criminal history and previous failures to appear, so that they could make risk-based decisions, rather than just setting a bond amount based on the offense charged.
- A 2017 study by Texas A&M's Public Policy Research Institute compared Tarrant County's money-based bail system and Travis County's risk-based system. The rate of new crimes being committed by people released before trial was 20% higher in Tarrant County's system, and 12% more new violent crimes committed by people released on bond in Tarrant County. This meant there were 13 more murders by people released pretrial in Tarrant County's money-based pretrial system.¹
- New Jersey crime rates have plummeted since implementing a research-based, risk-based pretrial justice system in 2017. One year later, violent crime is down more than 30% percent compared to the year before bail reform was implemented, with homicides down 32% and robbery down 37%.²

QUICKLY RELEASING LOW-RISK, NON-DANGEROUS PEOPLE PRETRIAL ALSO IMPROVES THEIR OUTCOMES, MAKING IT LESS LIKELY THEY WILL BE REARRESTED IN THE FUTURE.

- In a groundbreaking study of defendants in Kentucky jails, low-risk defendants held at least 2 to 3 days were almost 40% more likely to commit a new crime before trial than a low-risk defendant held no more than 24 hours. Further, the longer low-risk defendants were held, the more likely they were to reoffend. Those detained more than a month were 74% more likely to commit a new crime before trial than those released within 24 hours.³

- In another 2017 study, academic researchers found that controlling for all other factors, unnecessary pretrial detention led to an increase in future crime rates among Harris County misdemeanor defendants. Researchers examined outcomes of defendants who had previously been detained 18 months after that detention, and found pretrial detention 18 months prior was associated with a 30% increase in new felony charges and a 20% increase in new misdemeanor charges.⁴
- **These and other studies are compelling evidence that unnecessary time in jail leads to more criminal justice system involvement.** For one, pretrial detention makes it more likely low-risk defendants will lose their employment, lose their housing, and encounter family disruptions and other obstacles as a result of their jail stay. Also, when someone is held in jail, the more likely they are to plead guilty and be convicted, which will hinder their future employment and housing prospects.

Bail reform keeps dangerous people in jail while releasing others to their families and communities, ultimately creating safer Texas communities.

¹ Public Policy Research Institute at Texas A&M University, Liberty & Justice at 27, available at http://www.txcourts.gov/media/1437499/170308_bond-studyreport.pdf.

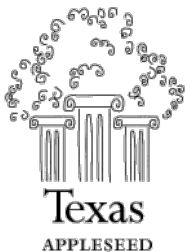
² Editorial, "Has bail reform been a success? Check the crime numbers, then decide," Dec. 5, 2018, available at https://www.nj.com/opinion/2018/12/has_bail_reform_been_a_success_check_the_crime_num.html

³ Christopher T. Lowenkamp et al., Laura & John Arnold Foundation, Hidden Costs of Pretrial Detention 10-11 (2013).

⁴ Paul Heaton et al., The Downstream Consequences of Misdemeanor Pretrial Detention (2016), available at <https://www.law.upenn.edu/live/files/5693-harriscountybail>.



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HOW BAIL REFORM CAN LEAD TO IMPROVED COURT APPEARANCE RATES

Texas should rely on risk, not money, to determine whether someone is eligible for pretrial release before they are convicted of any crime. Evidence shows this will lead to lower jail costs through the release of more non-dangerous people and will not increase failure to appear rates.

Typically, a person accused of a crime in Texas will only be released from jail if they can afford the bond amount set in their case. This leads to the unnecessary and costly detention of people who pose no public safety risk and no risk of flight, but simply have no money for bail. Texas should implement a system in which pretrial release is instead determined by a judge's individualized assessment of a defendant's risk of committing another crime or not appearing for court.

Doing so would keep court appearance rates steady, while improving public safety and saving money through reduced jail costs. Further, by implementing small changes that have been proven to work in other places, such as text message reminders of court dates, the state could improve court appearance rates.

FAILURE TO APPEAR RATES HAVE REMAINED STABLE IN JURISDICTIONS THAT HAVE INCREASED RELEASE OF LOW-RISK PEOPLE ON PERSONAL BONDS

- Kentucky transitioned in 2011 to a pretrial justice system where money bond was only required only if a judge determined a person was a significant flight risk or danger to the community. While this substantially increased the percentage of people released on personal bond, court appearance rates remained steady.¹
- A 2013 study of nearly 2,000 people accused of crimes in Colorado compared those released on unsecured personal bonds versus secured bonds (i.e., either cash bonds or surety bonds posted by a bail bondsman). Results showed no statistically significant differences in court appearance rates for people released on unsecured bonds versus secured bonds: 97% of low-risk defendants on unsecured bond appeared in court while 93% of low-risk defendants on secured bond appeared in court.²
- In February 2018, Philadelphia District Attorney Larry Krasner announced a new policy granting people charged with certain nonviolent misdemeanors and felonies release on personal bond, leading to an immediate 23% increase in the number of defendants released on personal bonds. Academic researchers have now evaluated outcomes of that policy and found no change in failure to appear rates or recidivism rates among the people being released.³

THERE ARE EFFECTIVE STRATEGIES TO INCREASE APPEARANCE RATES WITHOUT PRETRIAL DETENTION

- A 2011 report commissioned by the DOJ found that people rarely intentionally miss a court date. Instead, the most common reasons people do not come to court are work conflicts, transportation

difficulties, childcare conflicts, and forgetting about the court date. These common reasons for failing to appear can be addressed through cost-effective strategies that do not involve pretrial incarceration.⁴

- For example, just providing defendants with better information about when and where to appear as well as reminders of their court dates can dramatically improve appearance rates. A 2018 study found that failure to appear decreased by 32 percent in one jurisdiction by implementing two simple and inexpensive changes: redesigning notices about court dates and text message reminders.⁵

FAILURE TO APPEAR RATES IN HARRIS COUNTY SUFFERED DUE TO THE SYSTEM BEING IN CHAOS--NOT EXPANDED RELEASE ON PERSONAL BOND

- A widely-cited statistic by the bail bond industry claims failure to appear rates went up in Harris County following a federal court ruling requiring the county to release more people on personal bond. But increased failure to appear rates in Harris County were due to myriad factors throwing the system into chaos--not increased use of personal bond.
- In addition to systemic chaos caused by Hurricane Harvey, the court's injunction unintentionally led to people determined to be higher risk being released with less supervision than lower-risk people.⁶ Moreover, county judges opposed to bail reform reportedly manipulated court appearance statistics in attempt to make the new system appear to be a failure.⁷

Releasing people based on risk not wealth, while implementing other evidence-based strategies, can ultimately lead to improved court appearance rates.

¹ Pretrial Services, Administrative Office of the Courts, Kentucky Court of Justice, Pretrial Reform in Kentucky (2013).

² Michael R. Jones, Pretrial Justice Institute, Unsecured Bonds: The As Effective and Most Efficient Pretrial Release Option (2013).

³ Aurelie Ouss and Megan Stevenson, "Evaluating the Impacts of Eliminating Prosecutorial Requests for Cash Bail," *George Mason Legal Studies Research Paper No. LS 19-08*, February 17, 2019 available at <https://ssrn.com/abstract=3335138>.

⁴ Brian H. Bornstein, Alan J. Tomkins, and Elizabeth M. Neeley, "Reducing Courts' Failure to Appear Rate: A Procedural Justice Approach," May 2011 available at <https://www.ncjrs.gov/pdffiles1/nij/grants/234370.pdf>.

⁵ http://www.abajournal.com/lawscribbler/article/text_messages_can_keep_people_out_of_jail

⁶ Meagan Flynn, "Harris County bail system offers little help to defendants who most need it, cases reveal," *Houston Chronicle*, January 22, 2018 available at <https://www.houstonchronicle.com/news/houston-texas/houston/article/Harris-County-bail-system-shortchanges-defendants-12516456.php>.

⁷ Declaration of Judge Darrell Jordan, *O'Donnell v. Harris County*, Case No. 16-CV-01414 (S.D. Tex. 2016), No. 17-20333 (5th Cir. 2017).



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TEXAS VOTERS WANT COMMONSENSE PRETRIAL JUSTICE REFORM

Nearly three-fourths of the people in Texas jails have not been convicted of the charges against them, costing local governments more than \$905 million each year to house these individuals.¹ Dallas, Harris, and Galveston counties, which together represent over a quarter of the state's population, are being sued for their pretrial practices.² In a 2017 Pretrial Justice Institute (PJI) report titled "The State of Pretrial Justice in America," Texas was one of 12 states to receive a grade of D.³ The Texas Judicial Council, chaired by the Chief Justice of the Texas Supreme Court Nathan Hecht, has recommended that the pretrial system be reformed.⁴

A new poll from PJI, Right on Crime and Texas Applesseed shows Texas voters strongly support changes in how the pretrial stage—the front door—of their criminal justice system operates.⁵

TEXAS VOTERS ARE READY FOR CHANGE

- 90 percent of registered Texas voters are dissatisfied with the criminal justice system overall; 55 percent want either a complete overhaul or major reforms. Ninety percent of Republicans, 93 percent of Democrats, and 89 percent of independents think some change to the criminal justice system is needed.
- 81 percent of Texas voters believe the wealthy enjoy substantially better outcomes in the criminal justice system than do poor and working-class people, including 71 percent of Republicans, 87 percent of Democrats and 83 percent of independents.

80% favor 
education and
counseling

 86% favor
mental health
services

TEXAS VOTERS SUPPORT DETENTION ONLY WHEN IT PROTECTS PUBLIC SAFETY

- When asked which should be the deciding factor in pretrial detention decisions, Texas voters overwhelmingly favored using an assessment that takes into account public safety (72 percent).
- When given a menu of what courts and judges should consider in making the decision to release or detain someone pretrial, respondents overwhelmingly chose the seriousness of the charge combined with the outcome of a pretrial assessment instrument (59%).

TEXAS VOTERS WANT COMMUNITY-BASED SUPPORTS

- 82 percent of voters would provide court reminders or supervision for people awaiting trial in the community.
- Texas voters endorse services for people who are awaiting trial in the community:
 - 80 percent favor education and counseling to help people appear in court and not get arrested on new charges.
 - 86 percent favor services for people with mental health needs.



TEXAS VOTERS FAVOR COMMONSENSE PRETRIAL REFORMS

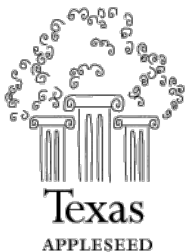
- Eight in 10 Texas voters would reduce jail populations by issuing citations for low-level, nonviolent offenses rather than taking people to jail.
- Instead of requiring people to pay money upfront to be released from jail before trial, three in five voters support the use of unsecured bonds, which is a promise to pay a fine for failing to show up for trial.
- Most Texas voters (75 percent) would limit how long a person charged with a non-serious offense could be jailed before trial.

Unnecessary pretrial detention due to a person's inability to pay money bail has serious consequences. It can cost people their jobs, housing, education, health—even custody of children. As [few as three days in jail](#) can make some people more likely to offend in the future.

Endnotes

1. Texas Judicial Council, [Criminal Justice Committee Report & Recommendations, Pretrial Decision-Making Practices](#) (October 2016).
2. See, McCullough, Jolie. "[Federal Judge Rules against Dallas County Bail Practices.](#)" The Texas Tribune, Texas Tribune, 21 Sept. 2018; McCullough, Jolie. "[Appeals Court Largely Upholds Ruling against Harris County Bail Practices, Reins Back Orders.](#)" The Texas Tribune, Texas Tribune, 14 Feb. 2018; Blakinger, Keri, and Nick Powell. "[Galveston County Hit with Bail Lawsuit Similar to Harris County Case.](#)" Houston Chronicle, Houston Chronicle, 9 Apr. 2018.
3. Pretrial Justice Institute, [State of Pretrial Justice in America](#) (November 2017).
4. See, State of Texas Resolution of the Texas Judicial Council, [Criminal Justice Committee Recommendations](#) for the 85th Legislative Session; Public Policy Research Institute at Texas A&M University and Texas Indigent Defense Commission, [Liberty and Justice: Pretrial Practices in Texas](#) (conducted at the request of the Texas State Office of Court Administration) (March 2017) demonstrated that pretrial reforms could result in safer Texas communities in conjunction with cost savings to local governments [http://www.txcourts.gov/media/1437499/170308_bond-study-report.pdf].
5. The survey was conducted by phone using professional interviewers and reached 606 Texas voters (unweighted); the results were then weighted into the base sample to represent their natural distribution in the electorate (N=560). The survey was conducted May 2-17, 2018. Respondents in the poll identified as follows: Democrat (39 percent); Republican (36 percent) and independent (13 percent). The remaining respondents (12%) volunteered "other" or "don't know".





HOW PRETRIAL RISK ASSESSMENTS REDUCE DISPARITIES AND IMPROVE SAFETY

The right risk assessment tool used the right way will lead to a pretrial justice system in Texas that is safer and more equitable than our current system.

Pretrial release hinges on money in most Texas counties—if one can afford the bond amount set in their case, they are released. Conversely, those who cannot afford the bond amount remain in jail. As a result, many dangerous people with financial resources are released, while low-risk, low-income people remain in jail.

Texas needs a better pretrial justice system, one that maximizes public safety while also treating people equitably. In order to develop such a system, pretrial release decisions should instead hinge on a person's risk of committing another crime if released and their risk of not appearing in court.

Pretrial risk assessments help judges make decisions based on the most accurate and objective information available. Risk assessments score a person's likelihood of returning to court for future court appearances and likelihood of reoffending if released. That score informs the judge's decision about pretrial release and any necessary conditions of release.

There are some common misconceptions about risk assessment tools, but the research shows that the right risk assessment used correctly actually make our communities safer and reduce existing racial and ethnic bias.

PRETRIAL RISK ASSESSMENTS CAN IMPROVE PUBLIC SAFETY

- Modern risk assessments can reduce the likelihood that someone is released who will commit additional violent crimes.¹
- A 2017 study commissioned by the Texas Office of Court Administration showed that 20% more crimes, and specifically 12% more violent crimes, were committed by people released on bond in Tarrant County, which was not using a risk assessment, compared to Travis County, which had implemented a risk assessment.²

PRETRIAL RISK ASSESSMENTS CAN REDUCE RACIAL BIAS

- Racial and ethnic disparities currently exist in pretrial decisions about bond type and amount. According to the Texas Judicial Council's Criminal Justice Committee, "[o]ver 25 research studies have consistently shown that African American defendants are more adversely impacted by pretrial detention decisions than are white defendants," meaning they are more likely to be assigned money bail and at higher amounts.³ Similar studies have documented disparities that adversely impact Hispanic defendants.⁴
- Yet, certain modern pretrial risk assessments have been shown to reduce this racial and ethnic bias. These tools allow for more objective pretrial decisions based upon factors that have shown to be actually predictive of risk.
- For example, one widely-used risk assessment known as the Public Safety Assessment (PSA) has been tested for racial bias and demonstrated to produce race-neutral and gender-neutral results that are not discriminatory towards any group.⁵

TO ACHIEVE BEST RESULTS, TEXAS NEEDS THE RIGHT RISK ASSESSMENT INSTRUMENT

- All risk assessment tools are not created equal. The preferred tools have been developed with the express purpose of reducing bias, while other inferior tools use factors that merely serve as proxies for race.⁶
- The Texas Office of Court Administration has developed a Texas-specific tool based on the PSA available for free to any Texas court.⁷ The PSA is an outstanding tool because it boils risk assessment down to a handful of factors related to defendant's past criminal convictions and failures to appear in court in order to determine future likelihood of failure to appear, new criminal activity, and new violent criminal activity, and has a high degree of predictive accuracy.⁸
- One key for any tool selected is that the factors and formula used to predict risk be transparent to all stakeholders including the public. The formula used to produce PSA risk scores is also publicly available.⁹

TEXAS SHOULD ALSO ESTABLISH THOUGHTFUL GUIDELINES FOR USE

- To ensure a pretrial risk assessment tool is working to reduce, not exacerbate, any existing bias, judges and others who will be using the tool must be trained how to properly use the tool.
- Furthermore, risk assessment results should never dictate that a judge detain an individual, but should instead be one piece of information contributing to individualized judicial decisions about the terms of pretrial release.
- After implementation, state and local jurisdictions should maintain publicly available data to monitor the predictive accuracy of the risk assessment tool as well as racial disparities, and adjust the risk assessment tool as necessary. Local jurisdictions should also continue to customize the tool to the local population.¹⁰

Using the right risk assessment tools to inform judicial decisions about pretrial release will ultimately lead to safer communities and a fairer justice system.

¹ Sharad Goel et al., *The Accuracy, Equity, and Jurisprudence of Criminal Risk Assessment* 8, 11 (2018) available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3306723

² Dottie Carmichael et al., *Texas A & M Univ. Pub. Policy Research Inst., Liberty & Justice: Pretrial Practices in Texas* (2017), available at http://www.txcourts.gov/media/1437499/170308_bond-study-report.pdf.

³ Texas Judicial Council Criminal Justice Comm., *Report & Recommendations* (2016), available at <http://www.txcourts.gov/media/1436204/criminal-justice-committee-pretrial-recommendations-final.pdf>. See also David Arnold et al., *Racial Bias in Bail Decisions* (2018), available at <https://www.princeton.edu/~wdobbie/files/racialbias.pdf> (Under a traditional bail system, black defendants are 3.6 percentage points more likely to be assigned monetary bail than white defendants and given bail amounts \$9,923 greater than white defendants).

⁴ *Id.*

⁵ Laura and John Arnold Foundation, *Results from the First Six Months of the Public Safety Assessment – Court in Kentucky*, p. 4 (July 2014); see also Claire M. Booker, *Yakima County, Washington Pretrial Justice System Improvements: A Pre- and Post-Implementation Analysis* (Nov. 2017), available at <https://justicesystempartners.org/wp-content/uploads/2015/04/2017-Yakima-Pretrial-Pre-Post-Implementation-Study-FINAL-111517.pdf>

⁶ Pretrial Justice Institute, *Pretrial Risk Assessment Can Produce Race-Neutral Results* (2017).

⁷ Pretrial Risk Assessment Information System for Texas, <http://www.txcourts.gov/praitx/>.

⁸ Pretrial Risk Assessment Can Produce Race-Neutral Results, *supra* note 5.

⁹ Public Safety Assessment: Risk factors and formula, <https://www.psapretrial.org/about/factors>.

¹⁰ Goel et al., *supra* note 1.



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