



Lindsey Linder, Policy Attorney

Work: (512) 441-8123, ext. 110

llinder@TexasCJC.org

www.TexasCJC.org

FACT SHEET 2017

Pretrial Reform

Responses to Five Claims About Personal Bonds and Pretrial Reform

Pretrial release decisions are crucial in the safe and efficient operation of Texas jails. Unfortunately, a 2016 study found that “Texas’ resource-based bail system keeps low-risk individuals unnecessarily detained before trial and allows risky defendants to buy their freedom with limited oversight. **This practice undermines public safety, disproportionately harms low-income defendants, and costs counties millions of dollars every year.**”¹ Nonetheless, there are those who advocate against improvements to Texas’ broken bail system. Below are five commonly cited arguments against pretrial reform, along with TCJC’s rebuttals.

CLAIM 1: PERSONAL RECOGNIZANCE [“NO COST”] BONDS MAKE US LESS SAFE AND RESULT IN HIGHER FAILURE-TO-APPEAR RATES.

Opponents of pretrial reform characterize personal bonds as some kind of “get out of jail free” card, giving people no incentive to return for trial or remain law-abiding. This is untrue. Personal bonds still create an obligation to pay a monetary amount if a bond is forfeited for failing to appear at trial. The only difference between a personal bond and a monetary bond is that a personal bond does not require a person to pay a bondsman an upfront, non-refundable fee totaling 10% of the set bond. According to University of Houston Law Professor Sandra Guerra Thompson, “**whether a person is released through a bondsman or by means of a personal bond, the incentives for the person to appear in court are exactly the same: the forfeiture of the bond which subjects the person to the possibility of civil liability for the dollar amount of the bond and a warrant issued for the person’s arrest for failure to appear.**”² Professor Thompson goes on: “**Bondsmen talk about ‘free bonds’ to create an illusion that money bonds provide greater public safety. They don’t.**”³ Bondsmen argue that they “bring people in,” but bounty hunters are almost never employed. More likely, people show up to court on their own or are arrested by police on arrest warrants for failure to appear.⁴

Like bondsmen’s “free bond” argument, it is untrue that release on a no-cost bond increases one’s likelihood of re-offending prior to trial. **A number of real-world examples demonstrate that monetary bail alternatives do not negatively impact public safety.** Kentucky recently reformed its pretrial system to release more defendants on personal bond, and its public safety and appearance rates have remained stable at 92 and 89 percent, respectively.⁵ A study examining pretrial release alternatives in Colorado found that, on average, 85 percent of individuals granted unsecured bonds were not charged with a new crime during their pretrial release, compared to 76 percent of individuals released on secured bonds; further, there were no significant differences in failure-to-appear rates between individuals granted unsecured bonds and those granted secured bonds. The study also found that higher bonds led to increased incarceration, without better outcomes.⁶ **The idea that commercial bail bonds are safer than alternatives, like personal recognizance bonds, is not substantiated by empirical support, and many studies suggest that such alternatives are a safer option.**

Another major study on the effects of pretrial detention found that the frequency with which low-risk defendants committed new crimes in the future was correlated to the amount of time they were detained pretrial. Even short periods of pretrial detention increased the likelihood that a low-risk defendant would eventually commit a new crime.⁷ **Unnecessarily detaining low-risk defendants prior to trial is what truly compromises public safety.**

CLAIM 2: MOST PRETRIAL DEFENDANTS HAVE HOLDS OR DETAINERS THAT PREVENT THEM FROM BEING BAILABLE.

When faced with claims that too many people are being held pretrial, some opponents of pretrial reform argue that most defendants are being detained pretrial as a result of holds or detainers, rather than because they cannot afford to pay a monetary bond. However, data does not support this claim. **High numbers of defendants are being detained pretrial in counties across Texas, and both Harris County⁸ and the city of Santa Fe⁹ are currently embroiled in lawsuits that challenge the constitutionality of their modern-day debtor's prisons.**

In Travis County in 2015, only 18,225 defendants were granted personal bonds out of over 26,000 eligible bookings; more than 8,000 defendants who were otherwise eligible for personal bond were denied.¹⁰ During the prior year in Harris County, only 4,643 people were detained pretrial with a hold, compared to over 38,000 who were detained pretrial on bail/bond without any holds. **While many others were released on bail/bond, this population of nearly 40,000 people was detained because people simply could not pay their monetary bond.**¹¹

CLAIM 3: INCARCERATION IS NECESSARY TO DETER SUBSTANCE ABUSE AND ADDICTION.

While many people advocate for substance abuse to be treated as a public health issue, some argue that addiction should be criminalized, believing either that those who abuse drugs or alcohol should be punished, or that forcing a person into abstinence can somehow cure addiction. However, **incarceration alone does not tackle the root causes of addiction, and research has shown that addressing drug offenses with treatment is a more cost-effective way of dealing with substance-addicted individuals than incarceration.**¹²

But more importantly, pretrial defendants do not receive treatment while awaiting trial. Because a court will not order treatment until adjudication, requiring a defendant to stay in jail pretrial, simply because he or she cannot afford bail, will not help to address addiction. Furthermore, **the commercial bail system does not distinguish between those who need treatment and those who do not.** Rather, individuals will be released by a bondsman if they can afford their bail amount, and they will stay in jail if they cannot – regardless of their treatment needs.

CLAIM 4: BONDSMEN PROVIDE SERVICES THAT PRETRIAL SERVICES CANNOT PROVIDE.

Pretrial services' legitimate and important role in criminal justice cannot be filled by bondsmen. **Pretrial services provide the court with non-adversarial information on defendants, including background information and criminal history, for the court to use in making informed release or detention decisions.** Many pretrial services use locally validated risk assessments to recommend release or detention.

By contrast, when Texas surrenders its release power to private bondsmen, the primary criterion for a release consideration becomes a defendant's ability to post monetary bail – not suitability for release. Both the leniency of bail forfeiture enforcement and a bondsman's ability to demand collateral equal to the full bail amount decrease bondsmen concerns about failures to appear. **Public safety is enhanced by pretrial services presenting accurate information about a defendant to a judge, and taxpayer dollars are saved because fewer low-risk defendants are needlessly detained pretrial.**

CLAIM 5: ELIMINATION OF COMMERCIAL BAIL WOULD BE EXPENSIVE TO IMPLEMENT AND WOULD RESULT IN LOST REVENUE FOR THE STATE AND COUNTIES.

While proponents of commercial bail assert that taxpayer dollars are saved by the use of bondsmen, available evidence does not support this assertion. Rather, relying on commercial bail may contribute to unnecessary and expensive pretrial detention.¹³

Between January and December 2016, Texas' county jails housed an average of 6,100 pretrial detainees charged with a misdemeanor on any given day.¹⁴ **At an average cost of \$59 per person per day,¹⁵ this population costs taxpayers approximately \$362,000 per day—more than \$132 million per year.** As of December 1, 2016, pretrial detainees made up 62% of Texas' county jail population.¹⁶ **Pretrial reform will help reduce the time and money spent keeping lower-level individuals in pretrial detention by increasing efficiency in the pretrial process and focusing on risk, rather than financial means.**

Additionally, it will reduce the likelihood that low-risk individuals lose their employment or housing while awaiting trial, and correspondingly reduce any potential reliance on taxpayer-funded public welfare programs or other social services that could result.

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Without the use of a risk assessment prior to magistration, **a significant number of low-risk, nonviolent defendants spend weeks or months behind bars before trial, simply because they cannot afford the high cost of their monetary bond.** Not only is this a constitutional concern, potentially resulting in costly liability for Texas jurisdictions, but it squanders public resources that could be better used to address substance abuse, mental health, or other issues within the community.

TCJC supports pretrial reform because it would give eligible individuals the opportunity to remain stable, productive members of their families and communities while awaiting trial. As former Texas District Judge Charlie Baird stated, **"It allows people who are presumptively innocent to get out and not just to continue to work, to provide for themselves and their families, and to help their lawyers to prepare a case, but it also saves the county millions a year."**¹⁷

Citations

¹ Nathan Fennell and Meridith Prescott, *Risk, Not Resources: Improving the Pretrial Release Process in Texas*, LBJ School of Public Affairs, The University of Texas at Austin, June 2016, 1,

<https://lbj.utexas.edu/sites/default/files/file/Risk,%20Not%20Resources-%20Improving%20the%20Pretrial%20Release%20Process%20in%20Texas--FINAL.pdf>.

² Sandra Thompson, "Pretrial Justice Update—November 2016," November 30, 2016; *e-mail available on request*.

³ *Ibid.*

⁴ *Ibid.*

⁵ Pretrial Justice Institute, *Kentucky Pretrial Services History Facts and Stats*, November 2013,

<http://www.pretrial.org/wpfb-file/kentucky-pretrial-services-history-facts-and-stats-pdf/>.

⁶ Michael R. Jones, *Unsecured bonds: The as effective and most efficient pretrial release option*, Pretrial Justice Institute, October 2013, 6-12,

<http://www.pretrial.org/download/research/Unsecured%20Bonds,%20The%20As%20Effective%20and%20Most%20Efficient%20Pretrial%20Release%20Option%20-%20Jones%202013.pdf>.

⁷ Laura and John Arnold Foundation, *Pretrial Criminal Justice Research*, November 2013, 2-3,

<https://www.pretrial.org/download/featured/Pretrial%20Criminal%20Justice%20Research%20Brief%20-%20LJAF%202013.pdf>.

The study is based upon data gathered in Kentucky in 2009 and 2010 from over 153,000 defendants. The defendants were tracked for a period of two years after the disposition of their case to see if they committed any new crimes after release.

⁸ Lise Olsen, "Harris County's Pretrial Detention Practices Challenged as Unlawful in Federal Court," *Houston Chronicle*,

May 2016, <http://www.houstonchronicle.com/news/houston-texas/houston/article/Harris-County-s-pretrial-detention-practices-7759726.php>.

⁹ American Civil Liberties Union, *ACLU Lawsuit: City of Santa Fe Runs Unconstitutional Debtor's Prison*, November 2016,

<https://www.aclu.org/news/aclu-lawsuit-city-santa-fe-runs-unconstitutional-debtors-prison>.

¹⁰ Travis County Community Justice Services, *Annual Report, FY 2015*, 8, via an open records request.

¹¹ Data collected from 2014 by the Harris County District Attorney's office. 41,827 defendants were released on bail/bond within 4 days; 38,459 people were detained pretrial with no holds; and 4,643 people were detained pretrial with holds.

¹² Doug McVay, Vincent Schiraldi, and Jason Ziedenbery, *Treatment or Incarceration*, Justice Policy Institute, January 2004, http://www.justicepolicy.org/uploads/justicepolicy/documents/04-01_rep_mdreatmentorincarceration_ac-dp.pdf.

¹³ Spurgeon Kennedy, *Commercial Surety Bail: Assessing Its Role in the Pretrial Release and Detention Decision*, Pretrial Services Resource Center, October 1994, <https://www.ncjrs.gov/pdffiles1/Digitization/156304NCJRS.pdf>.

¹⁴ Texas Commission on Jail Standards, *Texas County Jail Population*, December 1, 2016,

<http://www.tcjs.state.tx.us/docs/POPSUMCurrent.pdf>. County jails housed an average of 6,138 pretrial misdemeanants from January to December 2016.

¹⁵ Texas Commission on Jail Standards, *Immigration Detainer Report, 11/1/2016*; this figure is calculated by dividing the total cost of detention by the total number of inmate days (\$59.33).

¹⁶ Texas Commission on Jail Standards, *Texas County Jail Population*, December 1, 2016,

<http://www.tcjs.state.tx.us/docs/POPSUMCurrent.pdf>. County jails housed 40,507 pretrial detainees and a total population of 65,242 individuals as of December 1, 2016.