

A Primer on Bail Practices in Texas

Sandra Bland would be alive today if Texas had bail reform.

The Problem: The Misuse of Financial Bonds

In Texas, the primary method currently used for determining whether a person remains in jail pending disposition of a criminal case is the person's ability to pay a financial bond.

Here's how it works: After arrest, Sandra went before a magistrate and a prosecutor, with no defense counsel present. The magistrate set a financial bond of \$5,000 that she would have to pay to gain her release. In counties like Harris County, bond amounts are administratively set according to a bond schedule. See <http://www.ccl.hctx.net/attorneys/BailSchedule.pdf> In practice, this means that someone in Sandra Bland's position would have to come up with a \$500 fee (10%) that a bondsman would charge her to obtain her release. And let's be clear: when a judge sets a financial bond, the judge is making a decision to release her—if she has enough money. Sandra Bland did not have the \$500 needed to get out of jail. This is why jails like that in Harris County warehouse mostly poor people who are not convicted of any crime. Sandra was supposed to start a new job, but now she was locked up with no release in sight. She was probably despondent knowing that she would be locked up for weeks awaiting her trial.

The goal of a bail hearing is supposed to be to find a way to release a person while safeguarding against certain risks. Bail conditions should ensure that if a person is released, she will return to court. For most people, simply informing them of their court dates, coupled with the threat of arrest if they fail to appear, is enough. On the other hand, some people present a great risk of not showing up. For them, the courts may need to take other measures such as community supervision, court date reminders, or even money bonds. If a person presents a danger of committing a violent crime, courts should have the discretion to deny release altogether.

Setting a financial bond without taking into account a person's ability to pay OR the risk that the person will not return to court makes no sense. Most people who are arrested for minor, nonviolent crimes will return to court if released, and the courts have scientifically-validated tools for determining a person's risk level.

Insurance companies would not charge teenage drivers the same amount for car insurance as they would a responsible adult. They use risk assessment tools to differentiate drivers according to scientifically validated risk factors such as age. Such tools also exist for assessing the risks of flight and recidivism of arrestees. Employees in Travis County's "Pretrial Services Agency" apply a validated risk assessment instrument and provide this information to the judges. Thus, they already have the information they need to make release decisions in a rational and fair way.

If Sandra Bland had been arrested in Travis County, she would likely have been released within a few hours based on her presenting a low risk of not showing up for her court date. Basing the pretrial release issue on risk assessment would probably have prevented her suicide. Instead, the judge decided only to release her if she had enough money to pay for her freedom.

This link provides a chart that outlines the problem of financial bail in the U.S.:
<http://www.pretrial.org/the-problem/>

Here's some recent Houston Chronicle coverage on the brutality that some inmates have faced in the Harris County Jail: <http://www.houstonchronicle.com/news/special-reports/article/Violence-neglect-by-jailers-common-in-county-6548623.php>

Is there a better way?

The State of Kentucky employs a rational and humane system for determining pretrial release based largely on the findings of a scientifically validated risk assessment instrument. As a result, the state does not have the problems of overcrowded jails, jail suicides, and warehousing of the poor and mentally ill that exist in other states. Do the comparison: 75% of the people in the Harris County Jail have not been convicted of a crime. The vast majority of those pretrial detainees who are jailed in Harris County are: (1) safe to be released; (2) a judge has agreed to release them if they pay a bondsman; but (3) they can't afford to pay. In Kentucky, on a statewide basis, the percentage of people awaiting trial is 30% of the jail population, and the only reason they are in jail is that they are simply too risky to release. In terms of total numbers, however, that 30% in Kentucky represents a tiny number. For Harris County's jail population to have the same proportions of convicted inmates and pretrial detainees (70% convicted, 30% pretrial), we would have to see a 63% decrease in the overall jail population—a staggering number. With a total population of about 10,000, we're talking about finding the right conditions for releasing 6,300 people! If Harris County adopted the Kentucky system, these are the results we would see. And, yes, people show up to court in Kentucky and do not reoffend while awaiting the outcomes of their cases. There is a slight increase in both of these figures, but it is nominal.

Lest you worry too much about whether releasing people based on risk assessments will increase the rate of people who don't show up for their court dates or who commit new crimes, consider this: the current system makes release decisions contingent only on the ability to pay, with terrible consequences. In January of 2015, a dangerous man named Dante Thomas was released in Harris County on a \$50,000 bond after he killed his girlfriend in front of her children. His family gave a bondsman \$5,000 to gain his release within a few hours, before the Pretrial Services Agency could even complete its risk assessment. Within days, he had killed his aunt and critically wounded a cousin. <http://www.khou.com/story/news/crime/2015/02/16/attorney-for-suspect-in-willowbrook-mall-shooting-to-withdraw-from-cases/23514247/> The current system is more likely to get it wrong because judges make bail decisions by applying a "bond schedule," often before risk assessments can even be done. When money is the key determinant, people who should get out stay in, and people who should stay in get out.

To be clear, judges in Kentucky do impose some conditions on release for people presenting a medium level of risk. They may ask for a refundable financial bond to be paid to the court (not to a bondsman) or the use of property as collateral, as well as other forms of supervision by the Pretrial Services Agency. However, these conditions are tailored to the person's ability to pay and risk level, in order that they can be safely released.

In 2014, New Jersey and Colorado enacted state legislation to adopt systems much like that used in Kentucky. This year, the New York City eliminate financial bonds for all nonviolent offenses in the wake of a case much like the Sandra Bland case that occurred there. Many other jurisdictions are implementing risk assessment instruments and studying the issue of bail reform.

Here's a video by John Oliver on the use of risk assessment instruments as compared to a financial bond system. <https://m.youtube.com/watch?v=IS5mwymTIJU>

The Costs to Taxpayers

We can compare Harris County Jail to the jail system in the state of Kentucky which has eliminated the use of financial bonds. In Harris County, 75% of the entire jail population consists of people who are awaiting trial—mostly people like Sandra Bland who are too poor to pay for their release. Only 25% of the inmates have been convicted of crimes. By contrast, in the Kentucky, the percentage of pretrial detainees in the state's jails is only 30%, whereas 70% consists of people who have been convicted of crimes and are serving their sentences. For Harris County's numbers to reach the same levels as Kentucky's, the number of pretrial detainees would have to drop by a whopping 63%. In other words, if Harris County's judges relied on the recommendations of the Pretrial Services Agency, based on a risk assessment, they would make better decisions, with the end result being a drop in the pretrial detention population of 63%. By one estimate Harris County could save about \$28 million per year. And, this estimate assumes a daily cost per inmate of \$45. The actual estimate for housing a mentally ill inmate (of which there are about 2,000 in the Harris County Jail) is more on the order of \$200/day.

Effects on the Mentally Ill

In the Harris County Jail alone there are approximately 2,000 inmates who suffer from a diagnosed mental illness, and most of them lack the wherewithal to pay hundreds or thousands of dollars to get out of jail. Most of these people pose no danger to the community, and they could be adequately supervised in the community to ensure their return to court. In truth, most are in need of intervention outside the criminal justice system: medication, treatment, and other support. One thing is clear: they don't belong in jails. Their poverty keeps them in jails where their illness goes untreated and will become worse. As the tragic case of Sandra Bland shows, jails are notoriously bad places to house the mentally ill. Whatever conditions they have upon entry are only exacerbated by confinement in these terrible places. Jails may provide them with some medication, but these are not places equipped to provide treatment or even a healthy atmosphere. Depression, anxiety, and many other types of mental illness can quickly lead to suicidal thoughts and behavior within jails.

Law Enforcement and Judicial Support for Pretrial Justice Reform

Bail law reform is strongly supported by the law enforcement community such as the International Association of Chiefs of Police, the National Sheriffs Association, the National Jail Association and the National Prosecuting Attorneys Association. Police officers see first-hand

which of the people they arrest bond out and which stay in jail, and they don't like the outcomes. Reform is also supported by the Conference of Chief Justices, an organization of State Supreme Court Chief Justices. For a complete list of the organizations that support rational, evidence-based pretrial policies, see <http://www.pretrial.org/pretrial-national-coalition/>.

Effects on the Young Released from Foster Homes and Juveniles

Like the mentally ill, young people represent a vulnerable population for which incarceration should be used as a last resort. Many young people in foster care find themselves homeless upon leaving the foster system when they turn 18 years old. Typically, they will be arrested for minor crimes incident to their new homelessness. Under the current system of bond schedules, when they enter the criminal justice system they soon discover that they will not be released due to their poverty. These are youths with no one in the community to support them. What these youths need is access to social services and community support. Instead they are incarcerated unnecessarily and feel coerced to accept guilty pleas in order to get out of jail.

For minors in the juvenile justice system no right to bond exists. Instead, the original decision to detain a juvenile is based on a subjective decision-making process and then the juvenile faces a detention hearing conducted by a juvenile referee, which typically results in the youth remaining in detention pretrial. Studies have shown that jurisdictions that have a probation officer completing a risk assessment instrument, using objective standards, reduces the number of youths who are detained and reduces the percentage of minority children detained. Organizations such as the Annie E. Casey Foundation promote the use of risk assessment instruments as a rational approach to juvenile pretrial detention decision-making: <http://www.aecf.org/m/resourcedoc/aecf-juvenile-detention-risk-assessment-1-2006.pdf>.

Reducing Wrongful Convictions

People who languish in jail because they are too poor to pay for their release are desperate to get out. Studies now show that they are willing to plead guilty to crimes they did not commit if the prosecutor agrees to release them immediately on a sentence of "time served." In 2014, the Public Defender's Office in Houston received over 300 cases of guilty pleas in which people pled guilty to drug charges before crime laboratory testing had occurred. Attorneys later learned that the substances were not controlled substances. In some cases, the defendants had been in prison for weeks or months after pleading guilty. In these cases, the police had submitted the suspected drugs to crime laboratories for testing, but the results were not ready when the cases went to court. Defendants are eager to plead guilty before laboratories can realistically be expected to complete testing. For individuals who cannot pay a financial bond, they often prefer immediate release to the prospect of remaining incarcerated pending the completion of laboratory testing. This example teaches the broader lesson of the coercive nature of pretrial detention and how it can lead innocent people charged with many types of offenses to plead guilty rather than continue in jail pending a trial that may take months to occur.

Promoting the Use of Validated Risk Assessment Tools to Determine Pretrial Release

A recent national study by the Laura and John Arnold Foundation used a scientifically validated risk assessment tool to determine the risk levels of 153,000 arrestees from Kentucky who had been processed via a financial bond system. The study ascertained the risk levels of the arrestees, categorizing them as low, moderate, or high risk. The findings were astounding. First, the study found that of the high-risk defendants (people who should be detained pretrial due to their risk of flight and/or recidivism), over 50% came up with the money to get out of jail soon after arrest. Often they were charged with serious felonies and had a high bond amount set. Judges often think a high bond amount will keep a person in jail, but it doesn't, at least not if the person can come up with the money. And, judges and prosecutors have no idea who gets out and who stays in. High-risk people should be detained with no possibility of release pretrial, but they are not under a system that allows people to buy their way out of jail.

The other important finding was that when researchers examined the low-risk and moderate-risk people who paid the money to be released and compared them to the low-risk and moderate-risk people who were too poor to gain their release, they found that the latter category of people were much more likely to commit crimes in the future. This is easy to understand. Many of the people arrested come from the lower strata of society: the poorest people who live hand-to-mouth. Imagine a person who pays weekly rent on an apartment for himself and his family, he has a carpentry job with a work crew, he makes just enough money to feed the family and pay bills. If this person gets arrested, there is no bank account with hundreds of dollars to pay a bondsman. This man will have to sit in jail for weeks or months (at taxpayer expense). You can imagine what happens to his family, his job, his entire life. It should come as no surprise that this person will be more likely to commit future crimes. Even a short period in jail is devastating.

Progress in Texas and Harris County

Leaders in Harris County have been selected as finalists for MacArthur Foundation grants aimed at reducing the jail population without affecting public safety. It remains to be seen whether the county will win the award and what changes will result from the study supported by the grant.

At the state level, Supreme Court Chief Justice Nathan Hecht has created a Criminal Justice Committee of the Texas Judicial Council to study the issue of pretrial detention and bail reform. The committee's first meeting is scheduled for Sept. 17th in Austin.

<http://www.houstonchronicle.com/news/houston-texas/houston/article/Experts-eyeing-bail-reform-in-Harris-County-6352519.php?cmpid=gsa-chron-result> Chronicle article on recent developments in Harris County and at the state level to improve pretrial release practices.

<http://www.chron.com/opinion/editorials/article/Jailing-the-poor-6364295.php> chronicle editorial

State Representative Gene Wu is calling for bail reform in the wake of Sandra Bland's death: <http://www.chron.com/news/houston-texas/article/After-hearing-s-on-Sandra-Bland-s-death-lawmaker-6417569.php>

Lt. Governor Dan Patrick announced an interim charge to study jail safety in the wake of the Sandra Bland case: <https://www.texastribune.org/2015/08/18/lawmakers-create-interim-jail->

[safety-study-committ/](#) Senator Whitmire expresses concern that people arrested for nonviolent offenses are held due to an inability to make bail.

On August 19, the Greater Houston Coalition for Justice organized a press conference on the need for bail reform in the wake of the Sandra Bland case. Representatives of Senators Ellis and Whitmire attended, as well as numerous members of the Texas Organization Project, LULAC, the Texas Criminal Justice Coalition, defense attorney who specializes in representing the mentally ill George Parnham, civil rights attorney Randall Kallinen, and others. Here is the Chronicle coverage: <http://www.houstonchronicle.com/news/houston-texas/houston/article/Bail-reform-urged-after-Sandra-Bland-s-death-6454085.php>

Media Reports in New York

<https://www.facebook.com/nightline/videos/10153345417872801/?pnref=story> NYC young man kills himself after time in jail. African-American in jail on a minor theft charge, couldn't pay the bail.

<http://www.aol.com/article/2015/07/08/nyc-to-eliminate-bail-for-non-violent-suspects/21206527/> NYC eliminates use of financial bond in non-violent cases.

<http://www.nytimes.com/2015/06/11/us/when-bail-is-out-of-defendants-reach-other-costs-mount.html?smid=tw-share> NY Times coverage