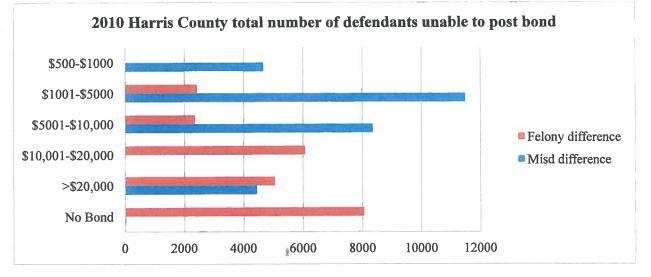
The Hidden Cost of Bail Bonds on Texas Counties Executive Summary

James 'Andy' Rogers

- Financial bonds became the most prevalent release mechanism in the United States in 1997.
- Non-financial bonds are used at a rate of 32% throughout the United States for felony offenses.
 - Texas utilizes non-financial mechanisms between 3.45% and 32.92% in ALL criminal cases.
- County jail populations in Texas are made up of approximately 50% pretrial detainees.
- As bond amounts are increased the number of defendant's able to secure the offered bond decreases; leading to similarly situated defendants experiencing different outcomes based on their ability to pay.



- This figure represents the number of defendants unable to secure the bond that is offered.
- Conservatively it identifies 16,000 inmates charged with only a misdemeanor offense who were also scored within the two lowest risk levels by pretrial services who remain in jail.
- Nationally, detained inmates spend a median number of 45 days prior to the adjudication of their offense, at a cost of approximately \$40 per day.

16,000 defendants X 45 days in jail X \$40/day = \$28,800,000 spent by Harris County to house defendants who cannot post bail

- Rearrest rates for defendants with financial and non-financial bonds remain almost equal.
- Failure to appear rates increase approximately 8% nationally when personal recognizance bonds are used opposed to surety bonds.

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Introduction

The criminal justice system is tasked with protecting the rights of the accused as well as protecting the community at large and upholding the rule of law. A major part of this system is the detention of arrestees awaiting disposition of their case, as well as those already convicted for their crimes. Once a person is arrested for commission of a crime release from jail is ordinarily secured. The American Bar Association states "the purposes of the pretrial release decision include providing due process to those accused of crime, maintaining the integrity of the judicial process by securing defendants for trial, and protecting victims, witnesses and the community from threat, danger or interference.¹" Furthermore, the ABA believes that statutes governing release favor pretrial release after balancing concerns relating to the safety of the community and the flight risk posed by the defendant.² In general, a state has two methods to grant release of a defendant: financial and non-financial.³ Financial release includes the imposition of a dollar amount which must be secured in conjunction with release, whereas a non-financial release is done without a secured financial source.⁴

Typically, financial bonds are secured by private entities taking a percentage fee from the defendant and a promise to pay the county if the defendant does not fulfill the conditions of his pretrial release. This surety system ostensibly provides several advantages. First, it outsources the role of monitoring released pretrial defendants to a private enterprise, and secondly, it places the burden in both financial and man-hour terms onto the private entity.⁵ This second benefit serves to conserve county resources that would otherwise be expended monitoring pretrial defendants and searching for those who failed to appear in court.⁶ Additionally, the surety system is said to provide an alternative revenue stream based on forfeited bonds on those that are unable to be hailed back to court after a non-appearance.⁷

The release determination and application of a financial bond involves a calculated risk estimation: the greater the risk, the greater the bond. At the center of the determination in all United States jurisdictions is the consideration of the risk of flight and the safety of the community.⁸ Thus the determination follows that if Defendant X is a low risk of flight and provides no specific, continuing threat to the community he will be released with a bond set at a nominal amount; whereas Defendant Y who shows significant risk factors that lead authorities to question either his likelihood of returning to court willingly or the safety of the community upon his release will in many cases be offered a much higher bond or by denial of bond completely. Commercial sureties secure the release of an estimated two million pretrial defendants each year.⁹ The release of pretrial defendants is vital to the continued functioning of a confinement system necessarily limited by capacity and budgetary concerns.

However, the arguments in favor of a financial release system can be refuted both in theory and on practical grounds. A problem exists in a system which ensures the safety of the community and compliance with the court's authority by only a sliding monetary scale. It would appear that we are no more safe because the bond of a defendant is raised, if the bond is still secured, therefore we are no more less safe when a bond amount is unable to be secured if other similarly situated defendants are able to secure that bond.

Overtime the use of financial release mechanisms has become the norm in the United States.¹⁰ The mantra carved into the Supreme Court building is "equal justice under the law." Equal justice not only means equal administration, but also equal outcome. We acknowledge the desire for equal outcome by creating sentencing guidelines at the federal level,¹¹ and reaffirm the idea in mandated changes to drug sentencing disparities between crack cocaine and powder cocaine, for example.¹² Making the ability to secure pretrial release of similarly situated defendants dependant on the ability to pay effectively introduces a caste system into the criminal justice system.

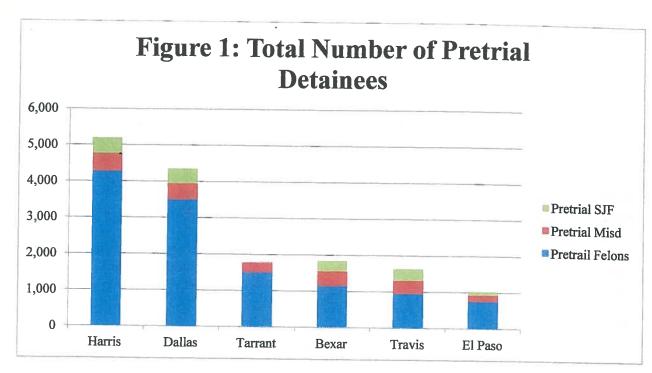
On a practical note concerns have arisen as well. First, payments to counties from commercial bondsmen have failed to be made, due to lax oversight and financially over extended bondsmen.¹³ Additionally, even while commercial bondsmen secure the release of two million pretrial defendants annually, jails are suffering from overcrowding. Simply put, commercial avenues are not capable of fully dealing with the complex problem of pretrial overcrowding.

This paper advocates for the comprehensive use of non-financial release conditions as an alternative to the financial release program. It addresses the issues present in the current climate and the application and potential outcome that could be expected. Part I will address the number of pretrial detainees. Part II will focus on release practices, followed by Part III which identifies the reasons many people are unable to secure release and provides estimates of how many people this affects. Finally, Part IV considers the outcomes likely with a larger scale application of non-financial release conditions.

I. Pretrial Detainees

To better appreciate the advantages and disadvantages associated with different pretrial release mechanisms it is important to understand the potential impact that changes could have in the jail population. To begin, Figure I provides the total numbers of pretrial detainees housed within county jails for the six largest urban counties in Texas.

Figure 1 shows little that is surprising. Detainees with a pending felony charge account for the vast majority of the pretrial jail populations, whereas detainees with a less serious pending misdemeanor or state jail felony are present in fewer numbers. Figure 1 only shows the total numbers which is useful form global overview but less useful for comparative purposes. Figure 2 relates the primary data in Figure 1 as a percentage of the total jail population for each respective county, showing what degree the housing of pretrial detainees plays on jail overcrowding in each county. Figure 3 then normalizes the total number of pretrial detainees based on the total population of the respective county.





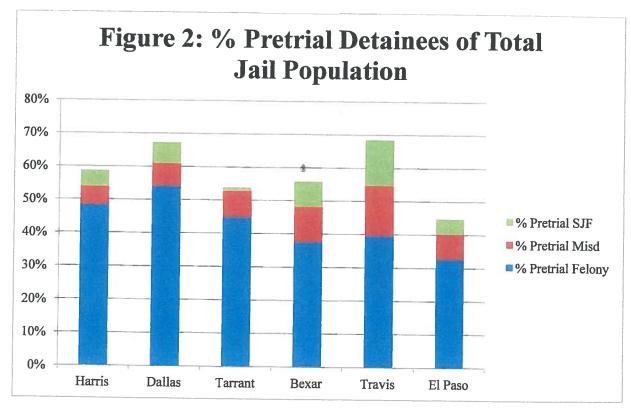


Figure 2: Adapted from Texas Commission on Jail Standards, Abbreviated Population Report for 1/1/2012 (2012).

Figure 2 demonstrates that the county jail pretrial populations in the most populous Texas counties range from just below 45% in El Paso County to just below 70% in Travis County. Thus, Figure 2 is an important piece of the comparative analysis of the counties, which is fully depicted in Figure 3.

Figure 3 compares, relative to the county population, the distribution of pretrial detainees in each of the three major classes of criminal offenses in Texas: misdemeanors, state jail felonies, and felonies. This depiction is necessary because it identifies both the relative number of pretrial detainees in each category and, by implication the relative success of different release practices in lowering those numbers. The idea behind the use of non-financial personal bonds is that defendants facing less serious charges could be more readily released without fear, from the community, of flight or subsequent offense thus alleviating jail overcrowding issues within a given county. Interestingly, while, Travis County reported issuing 18,275 personal bonds during fiscal year 2009¹⁴ (compared to just 5,823 personal bonds issued in Harris County during 2009¹⁵); the county detains pretrial misdemeanor defendants at a rate more than three times that of Harris.

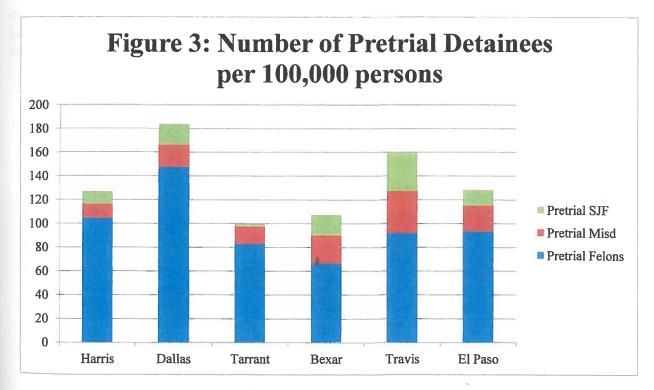


Figure 3: Adapted from Texas Commission on Jail Standards, 2011 Average Daily Populations; U.S. Census 2010.

Admittedly, this statistic without more does not mean much. It could mean that Travis County typically charges more misdemeanors than other counties or that despite the issuance of personal bonds they have a population that is not reached by current assessment measures or are ineligible under their defined guidelines to receive a personal bond. What it definitely does say is that jail overcrowding is not alleviated simply by issuing more personal bonds. It is also affected by charging decisions, arrest patterns, and assessment instruments.

II. Pretrial Release Practices

Figures 1-3 showed the scale of the problem of jail overcrowding. This section focuses on which release procedures would best serve each community. The options are vast and the nuances great but we can look at some data to examine what is actually being done with respect to the idea of issuing personal bonds to low-risk detainees. Across the United States the two major avenues for pretrial release have been through the use of surety bonds and personal recognizance bonds or, in plain language, financial and non-financial bonds.¹⁶ In many jurisdictions, following arrest the next step is to secure a bond from a commercial bail bondsman. However, the rise of the commercial bail agent has only happened recently in the United States. Figure 4 shows that during the late 1990s surety bonds overtook personal recognizance (PR) bonds.

Figure 4 shows the progression of the reliance on different types of release mechanisms. Because Figure 4 breaks down bond types past the simple financial and non-financial categories we will briefly define the significant groupings. Surety bonds allow a defendant to pay a percentage of the set bond amount to a commercialized bail agent.¹⁷ A PR bond, however, allows the defendant to merely enter into an agreement to return to court.¹⁸ The specific language found in the Texas Code does not allow for a personal recognizance bond but for an unsecured personal bond.¹⁹ The difference is that in an unsecured bond an actual bond amount is set which is to be forfeited by the defendant if warranted in cases such as failures to appear, but because of the unsecured nature of this bond it is still considered a non-financial bond for release purposes. Functionally, at the point of release, there is no difference between a personal recognizance bond and an unsecured personal bond.

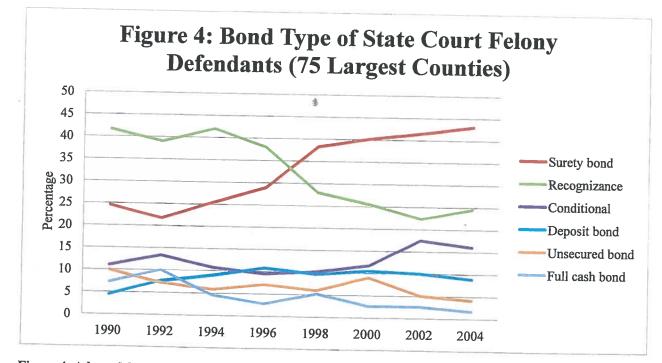
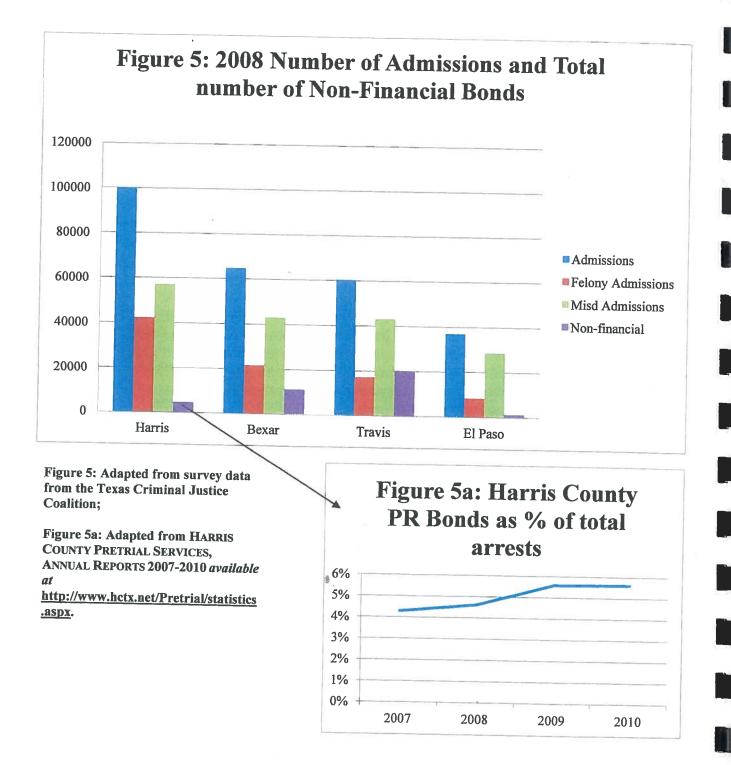


Figure 4: Adapted from Bureau of Justice Statistics Report 2, supra note 3.

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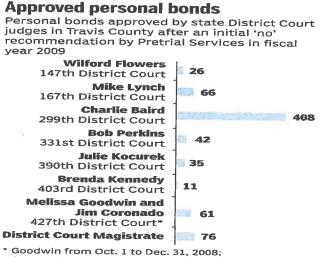
While we can easily identify from Figure 4 that reliance on surety bonds has surpassed the use of PR bonds, the percentage shown is not representative of the actual rates used in totality. An important factor when determining pretrial release, especially within the scope of non-financial bonds, is how defendants are recognized and then released. The process of recognition of potential candidates and guidelines allowing for their release is at the heart of non-financial release and monitoring programs. For instance, the data presented in Figure 4 is the percentage of released felony defendants in the 75 largest counties in the United States by the type of bond they received.²³ It was determined that this cohort secured release in ultimately 62% of the cases.²⁴ Therefore a more accurate measure for how pretrial release effects the entire jail population is not a percentage of total releases but a percentage of total arrests. Simply put, even if you gave 100% of those screened non-financial bonds it does not affect the relevant issues if only a small portion of the jail population was screened for release. It is a simple concept, but still data derived from these types of studies does not always emphasize this measure.

If during the 1990s the use of commercial bondsmen became the most common way to secure release from jail as shown above, then the reliance on financial release mechanisms in Texas was more extreme. Figure 5 demonstrates a 2008 snapshot of the amount of non-financial bonds issued in four Texas counties. Figure 5a expands the coverage dates in relation to Harris County over a four year period running from 2007-2010. Figure 5 reveals several discrepancies exist. First, the national average of non-financial bonds is approximately 32% over a 14 year period compared to major Texas counties that implement non-financial bonds at a rate between 3.45% (El Paso) and 32.92% (Travis County).²⁵ At first glance it would appear that Travis County was in line with national averages for non-financial pretrial release, however, the Travis County average is based on a total number of jail admissions for both misdemeanor and felony offenses compared to the national average based only on felony defendants. This discrepancy allows the inference that a true national average would be higher than the asserted 32% which would therefore cause all Texas counties to fall well under the true national average to some unknown degree. This is an interstate discrepancy and can be accounted for by many factors including the authorization of different types of release, the funding and screening instruments used by pretrial services departments, and the makeup of offenses in a given jurisdiction. Because of these uncontrollable variables, this interstate discrepancy is not of great concern, and primarily stands to show the possible impact of such programs in Texas.



Discrepancies interstate are less troubling than intrastate discrepancies because intrastate discrepancies indicate to remarkably different outcomes within the state's justice system depending on the county in which you are arrested. The second discrepancy observable in Figure 5 is the intrastate disparity in release practices. While the initial processes of bond determination varies between Texas counties the final decision ultimately lies with the presiding judge of the

trial court.²⁶ Even judges *within* any given county may vary greatly in the use of non-financial bond usage.²⁷



Coronado from Jan. 1 to Sept. 31, 2008; Coronado from Jan. 1 to Sept. 31, 2009 Source: Travis County Pretrial Services department

Robert Calzada AMERICAN-STATESMAN

Figure 6: Steven Kreytak, District Judge's High Use of Personal Bonds Singled Out, AMERICAN STATESMAN, Nov. 20, 2010 (illustrating the variances between judges in Travis County when issuing non-financial personal bonds during fiscal year 2009) available at http://www.statesman.com/news/statesmaninvestigates/district-judges-high-use-of-personalbonds-singled-1063239.html.

In Travis County, for example, one Judge has been criticized for utilizing his authority despite negative referrals from the pretrial services staff. Figure 6 illustrates this assessment.²⁸ This disparity is made possible by the vesting of ultimate discretion with a single individual who can either follow or disregard recommendations by pretrial services divisions that result from evidence-based practices. Under Texas law either the trial court judge or a magistrate has the authority to issue a personal bond.²⁹ One suggested alternative which alleviates this issue is vesting the initial release authority in a pretrial services department based on established evidence-based practices.³⁰

III. Securing Release

As the previous section have shown, jails house significant numbers of pretrial detainees and judges more often than not decline to release people on non-financial bonds. This section examines both how many individuals are able to actually make bond and how long those unable to make bond stay in jail before the disposition of their case. Figure 7 shows that the increased reliance on financial release mechanisms that started in the United States in the late 1990s produced a corresponding increase in those offered bail but unable to pay the amount to secure release.³¹

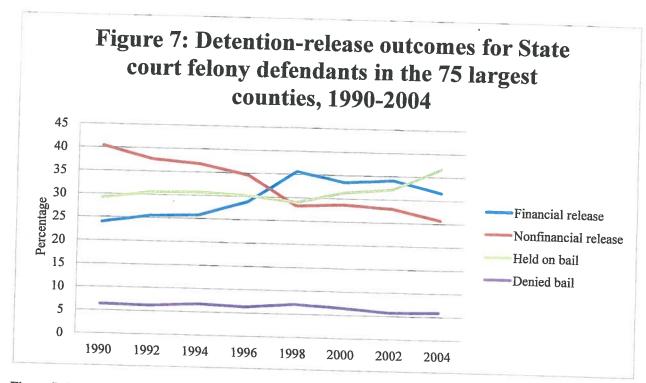


Figure 7: Bureau of Justice Statistics Report 2, supra note 3.

The Eighth Amendment disallows excessive bail amounts that may unnecessarily hinder the release of an accused person.³² Bail amounts are guided in Texas by the requirement that the judge taking the bail consider the following rules:

(1) The bail shall be sufficiently high to give reasonable assurance that the undertaking will be complied with. (2) The power to require bail is not to be so used as to make it an instrument of oppression. (3) The nature of the offense and the circumstances under which it was committed are to be considered.(4) The ability to make bail is to be regarded, and proof may be taken upon this point.(5) The future safety of a victim of the alleged offense and the community shall be considered.³³

Despite, the nature of the above statute requiring an individualized bail assessment, some counties implement a standardized bail schedule.³⁴ While seemingly cutting the individualized assessment out of the equation, standardized bond schedules can act to remove disparities in bail assessments. Regardless of the use of a standardized bond schedule, it is likely that some defendants who would be considered low risk upon release remain in jail due to an inability to pay. The inability to make bail could be a result from the use of a high bail amount to further detain defendants who are considered either a continuing threat or a flight risk (opposed to merely holding these defendants without bail) or it may be a result of low risk defendants who are unable to secure any amount of bail, no matter how low. As one might, expect Figure 8 shows that the lower the bail amount the more defendants are able to post bond.³⁵ Figure 8a generally shows the same trend applicable in Harris County: the higher the bond, the less likely a defendant will be able to pay the amount required regardless of the charges that are pending against the defendant.³⁶

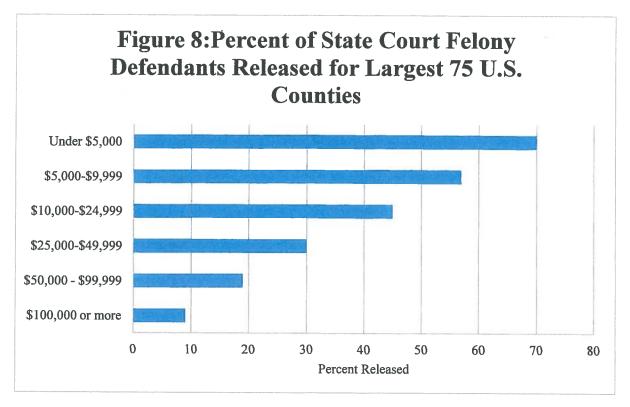


Figure 8: Adapted from Bureau of Justice Statistics Report 3, supra note 3.

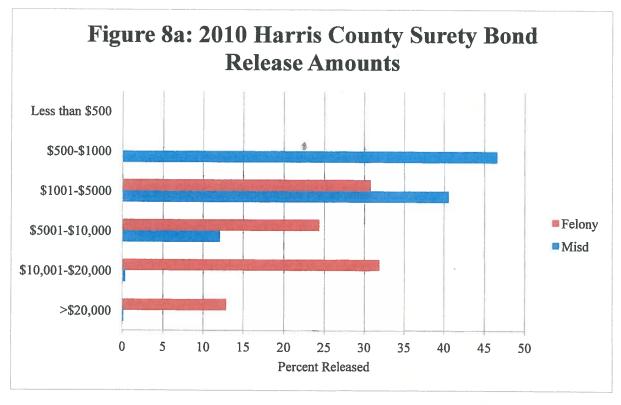


Figure 8a: Adapted from HARRIS COUNTY PRETRIAL SERVICES, ANNUAL REPORTS 2010 available at http://www.hctx.net/CmpDocuments/59/Annual%20Reports/2010Annual%20Report.pdf.

The question remains as to how many defendants are detained pending the completion of their case because they are unable to make bail. Unfortunately, this statistic is not currently tracked. Figures 9 and 9a estimates the number of pretrial detainees for Harris County who have been offered bond but are unable to meet the financial obligation. This represents the number of people housed in the county jail for the failure to pay while a similarly situated individual is released upon paying the bond. Figure 9 examines the entire Harris County cohort, whereas Figure 9a examines only defendants with misdemeanor charges. Harris County is an ideal county to study because the county actively reports this data in its pretrial services annual report³⁷ and actively uses a recommended bail schedule.³⁸

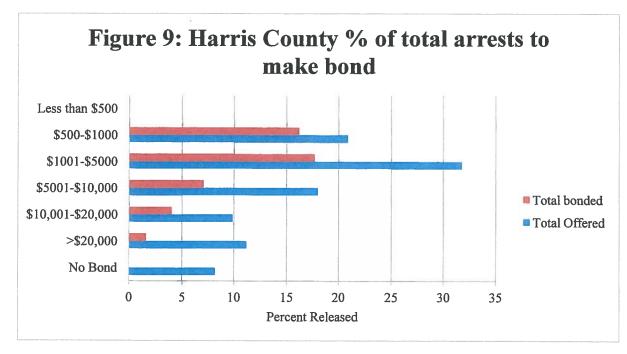


Figure 9: Adapted from HARRIS COUNTY PRETRIAL SERVICES, ANNUAL REPORT 2010 at 8.

Figure 9a examines the misdemeanor population. In 2010, Harris County arrested 98,922 people, 63.8%, or 63,151 people had only misdemeanor charges filed against them.³⁹ Figure 9a shows that the differential between of those offered a surety bond in the \$500-\$1,000 range is 4,677 persons or 7.4%. When the bond amount is increased to the \$1,001-\$5,000 range the number of people unable to post bond jumps nearly 250% to 11,502 persons which is equivalent to 18.3% of this category. Finally, when bond on a misdemeanor charge is between \$5,001 and \$10,000, which applied in 12,526 cases, only 4,165 defendants are able to post bond. At this high bond rate, only 8,361 defendants facing only misdemeanor charges or 13.2% of the defendants eligible for a surety bond in this bond category were detained. In contrast, their more financially advantaged counterparts are able to pay to secure their release pending the outcome of their case. This differential data is presented in Figure 9b along with the corresponding felony data.⁴⁰

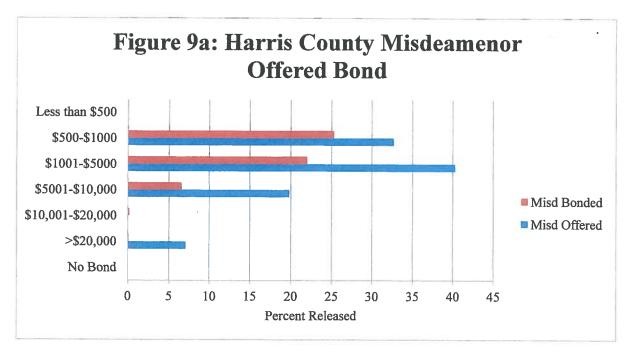


Figure 9a: Adapted from HARRIS COUNTY PRETRIAL SERVICES, ANNUAL REPORT 2010 at 8.

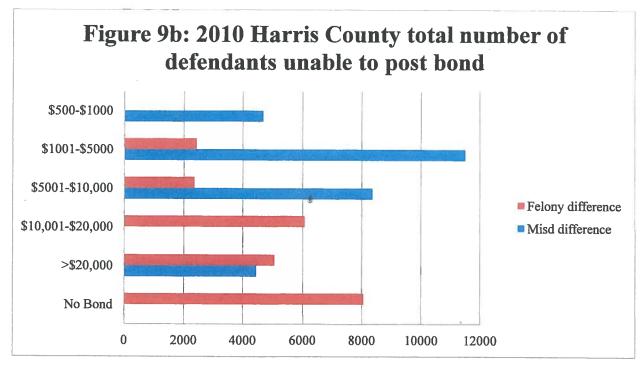


Figure 9b: Adapted from HARRIS COUNTY PRETRIAL SERVICES, ANNUAL REPORT 2010 at 8.

The decision to offer bail reflects a finding that the defendant is neither a threat to society nor a threat to flee. Yet with the surety system approximately 53,000 defendants in Harris County are unable to make bond each year while other similarly situated, albeit wealthier, defendants are able to walk free.⁴¹ Using the standardized misdemeanor bail schedule in Harris County we can get an idea of what people are actually charged with. If bond falls within the \$500-\$1,000 range the defendant would likely be charged with either a single class A

misdemeanor or a class B offense with the possibility of a prior misdemeanor conviction.⁴² Additionally, we see that to increase the bond into the price category a more substantial criminal history is required or for the defendant to already be on community supervision or bond for another pending case.⁴³ Interestingly, the misdemeanor bond schedule does not contemplate a bond over \$5,000 therefore those cases are likely due to court procedures to raise the bond amount for some reason.⁴⁴ Bluntly put, it is likely that defendants with such a criminal history or a felony offense that demands excessively high bond amounts would not be seen by many screening methods as a good candidate for release. Yet, because they can afford the bond and because jails are overcrowded with those lesser threats unable to make even a \$500 bond, we release them back into the community. To arrive at the number of low risk individuals a different way than by analyzing published bond schedules we can look at assessed risk levels. Harris County Pretrial Services assessed final risk assessment levels of low in 8,120 misdemeanor cases and 2,676 felony cases and low moderate risk levels to 13,854 misdemeanor cases and 5,659 felony cases for a total of roughly 30,000 defendants of which approximately 22,000 are charged with a misdemeanor only.⁴⁵ Recall that the differential release numbers for misdemeanor defendants with bond set between \$500-\$10,000 was 24,540 defendants or 16,179 defendants if the defendants exceeding the standardized bond schedule are removed as previously suggested. These numbers give us a range of pretrial defendants who are unable to make bond ranging from 16,000-53,000.

Money is a major factor in the criminal justice system. It is by its nature a drain on public funding because it does not truly have the ability to be a revenue source. Yet it is vital to the functioning of an ordered society. How much money is being spent to house people who the courts have determined can be safely released because they are unable to pay? First, let's start with Harris County misdemeanor cases. Earlier we estimated that 16,000-25,000 defendants are offered bond but are unable to pay. A common estimate per inmate for housing costs is between \$40-\$45 per day.⁴⁶

Next, we factor in the number of days one of these defendants is likely to spend in jail awaiting the disposition of his case. Harris County Pretrial Services was until mid-2010 in a unique position in that it would supervise both defendants released under a personal bond, as is typical, and a selection of defendants who posted a financial bond.⁴⁷ This may add a confounding factor to this data, because it is only representative of a fraction of the total population released on financial bonds. Figure 9 shows the median number of days supervised by offense level for Harris County in 2011.

In 2010 the median level of days supervised for defendants issued a financial bond for a misdemeanor case in Harris County was 85 compared to 58 for those issued a personal bond.⁴⁸ This number misses the mark for the determination of how long defendants remain in jail prior to adjudication. In truth, the number of days a defendant is in jail prior to conviction is likely shorter.

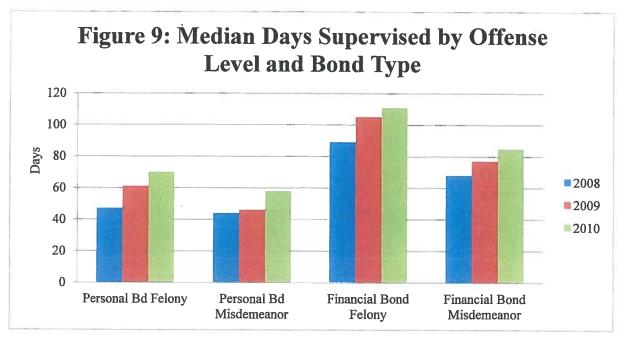


Figure 9: HARRIS COUNTY PRETRIAL SERVICES, ANNUAL REPORT 2010 at 7.

A report by the Bureau of Justice Statistics shows that detained defendants, irrespective of charge spent a median of forty-five days from arrest to adjudication, forty days shorter than those released in Harris County on a non-financial bond assuming the non-financial bond is implemented quickly.⁴⁹ If we estimate that defendants spend an average of forty-five days in jail prior to adjudication, and that approximately 16,000 defendants are unable to secure release and thus fall into this category, and that those defendants cost on average \$40 per day to house we may estimate that the county spends \$28,800,000 on housing defendants who are unable to make bail.

Table 1 shows that detained defendants' cases are adjudicated much sooner than defendants who secured pretrial release. Because of the well established prevalence of plea bargaining this differential may identify an increased incentive to plea bargain and thus bring an end point to the case. This incentive is also evidenced by increased rates of conviction for detained defendants. In all but misdemeanors cases the conviction rate was significantly higher than that of similarly situated defendants who were able to secure pretrial release.⁵⁰ With regard to Harris County disposition data for all cases where a personal bond was given, 49.6% faced no additional jail time and 24.8% were not convicted at all, compared to only 16% of the defendants that pretrial services supervised who had a financial bond.⁵¹ Strangely, defendants supervised with a financial bond served no additional jail time at a rate of 41.8%, which is less than the rate for their personal bond counterparts.⁵² This reduction is likely explained by the increased amount of jail time incurred as a result of slower processing of financial bonds which will be discussed in the next paragraph.⁵³

	Median number of days from arrest to	Released de	Detained defendants		
	adjudication Adjudication outcome	127	days	45	days
	Convicted	60	07		
	Folone	60	%	78	%
	Felony	46	%	69	%
	Misdemeanor Not	14	%	9	%
	convicted	10			
	Direction 1/	40	%	22	%
	Dismissal/acquittal	31	%		
	Other outcome	9	%	19	
L	Note. Detail may not add to total because of roun	7	/0	2	%
S	ource: Bureau of Justice Statistics Report 7, supra note	uing.			
	and the statistics Report 7, supra note	3			

Table 1: Adjudication outcomes for released and detained State court felony defendants in the 75 largest counties, 1990-2004

eport 7, supra note 3.

Savings however do not only come from releasing defendants prior to final adjudication. Table 2 from the Bureau of Justice Statistics shows that the average time from non-financial release until adjudication is reduced with respect financial release alternatives.⁵⁴ This is similar to data discussed previously relating to Harris County in Figure 9. Additionally, the report shows that non-financial releases are affected at a quicker rate, thus reducing the amount of time a defendant actually spends in jail pre-trail.⁵⁵ Within one week from arrest between 75-80% of both financial and non-financial releases had occurred, but non-financial releases occurred at a rate of 59% 1 day after arrest compared with 45% of those securing a financial release.⁵⁶

the 75 largest counties, 1	1990-2004	1	aajaaa		tate court felony defendants in
	Average]	Time			
Type of release All types Financial releases Surety bond	Mean	112 125	days days	Median 90 106	days days
Full cash bond Deposit bond Property		125 122 126		106 100 108	÷
bond Non-financial releases Recognizance Conditional Unsecured		140 101 98 103	days	120 75 72 75	days
bond ource: Bureau of Justice Stat	inti - D	110		86	

	1 able 2: 1 lime from pretrial release until adjud	action of Classical
	the 75 largest counties, 1990-2004	cation of State court felony defendants in
ł	10 migest countres, 1990-2004	

S e Statistics Report 5, supra note 3.

Table 1. Tr

This data highlights potential costs savings by using personal bonds in lieu of financial bonds. The areas include, reduced case disposition time and reduced time to secure release. However, with these reductions comes the increase in supervision costs that once were maintained by the private bonding agencies and under a personal bond program are monitored under the authority of the county.

IV. Outcomes and Issues

The increased use of personal bonds would require that the county direct the supervision of defendants and also be responsible for apprehending them if they fail to appear. We will now identify rates of defendants who fail to appear and re-offend while released. These failure rates are a critical part of the analysis because they go to the heart of protection of the community as well as the efficient functioning of the criminal justice system.

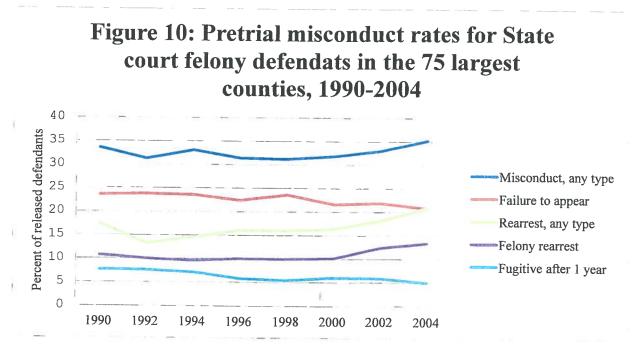


Figure 10: Bureau of Justice Statistics Report 8, supra note 3.

Figure 10 shows that overall misconduct, regardless of type of pretrial release is around 35%.⁵⁷ A breakdown of this data based on the type of bond received is shown in Table 3.⁵⁸ Table 3 shows that failure to appear rates are more likely to occur among those defendants released on recognizance. The rate of rearrest is virtually equal among all type of release.⁵⁹ Harris County reported rates lower than this national average.⁶⁰ Recipients of personal bonds in Harris County had a failure to appear rate of 10.0% compared with the supervised financial bond population of just 4.1%.⁶¹

		Percent of released defendants charged with pretrial misconduct							
Type of pretrial release Release on	Number of defendants	Any type			rrest	Failure appear	e to	Fugi	tive
recognizance	80,865	34	%	17	%	26	%	8	%
Surety bond Conditional	78,023	29	%	16	%	18	%	3	%
release	31,162	32	%	15	%	22	%	6	%
Deposit bond	20,993	30	%	14	%	22	%	7	%
Unsecured bond	17,001	36	%	14	%	30	%	10	%
Full cash bond	11,190	30	%	15	%	20	%	7	%
Property bond	3,649	27	%	17	%	14	%	4	%
Emergency relea Source: Bureau of Justice Statis	se 2,656	52	%	17	%	45	%	10	%

Table 3: State court felony defendants in the 75 largest counties charged with pretrial misconduct, 1990-2004.

Source: Bureau of Justice Statistics Report 9, supra note 3.

While it appears that the likelihood of rearrest is not affected by the type of bond defendants are placed on, it does appear that the use of surety bonds reduces the failure to appear rate. This is a disconcerting finding because an increase in failure to appear rates will ultimately require local law enforcement to serve warrants for the defendant's arrest. Alternatively, under the surety system a bondsman would be responsible to initially locate the defendant or else surrender the bond amount.⁶²

Issues:

A majority of this article focused on data published by Harris County. Harris County is interesting to study because Harris County, more than any other county in Texas, relies on outside contracts to house a portion of its jail population.⁶³ In 2009 Harris County spent \$17 million on housing inmates in other jails.⁶⁴ Texas recently has had an outbreak of issues surrounding bail bondsman which may lead some to feel apprehensive about any services they provide. For instance the *Dallas Morning News* has reported that Dallas County has been remiss in collecting at least \$35 million in forfeitures that result when suspects fail to show up for court.⁶⁵ Similar findings of \$26 million were reported in Harris County.⁶⁶ Smaller counties have had bad luck from bond companies going broke and being unable to secure the bonds they are responsible for.⁶⁷

Even if a county manages to implement a policy that reduces the population of their jail, savings are not guaranteed.⁶⁸ Upon reducing jail populations private jailers contracting with the county may demand an increase in price per inmate to compensate for the reduction in revenue due to them.⁶⁹

Conclusion

Detention and release of pretrial defendants is necessary to the functioning of county jails and the fairness of the criminal justice system. Detention and release is also directly linked to concerns over community safety. In many states it is a matter of course that arrestees secure release by paying a financial bond, which does not have to be the case. For example, in Kentucky, Illinois, Oregon, and Wisconsin commercial bail agents are not allowed to operate.⁷⁰ These states rely on non-financial release mechanisms in most instances. Texas issues nonfinancial bonds at a rate lower than most of the urban areas in the country. It is estimated that in Harris County alone 16,000 arrestees are detained annually on only misdemeanor charges because of the inability to pay. The linking of release from detention to a monetary imposition operates to create a caste system between similarly situated defendants who can afford bail and those who cannot. Furthermore, this caste system burdens Harris County with an estimated \$28 million annually in jail expenditures for these defendants unable to post bail.

Implementing non-financial means of release has been shown to reduce case disposition times and secure faster release of eligible defendants thus saving counties money. Additionally, the implementation will alleviate undue pressure to plea bargain which reduces disparities in outcome.

Despite these positive effects, evidence suggests that those defendants released without financial incentives to return to court fail to appear at a higher rate than those who have secured financial release. This drawback is best alleviated by a more robust pretrial services department to provide notification and monitoring. Additionally, abdicating power to a pretrial services department serves to reduce intrastate disparities in the application of Texas law as it pertains to bail.

The benefits provided for by the use of commercial bail agents are negated by lax oversight resulting in large amounts of unpaid forfeited bonds. A properly funded pretrial services department can provide the same service while alleviating overcrowding in county jails and increasing the fairness of the criminal justice system for all parties.

⁸ See Tex. Code Crim. Proc. Ann. Art. 17.03; ABA Standards at 1, *supra* note 1 (although not jurisdictional in nature the ABA, a leading opponent of the use of commercial surety bonds acknowledges the heart of the release determination).

⁹ Bureau of Justice Statistics Report 4, supra note 3(citing Professional Bail Agents of the United States).

¹⁰ See infra page 5.

¹ AMERICAN BAR ASSOCIATION, HOUSE OF DELEGATES, ABA CRIMINAL JUSTICE STANDARDS ON PRETRIAL RELEASE THIRD EDITION (2002)[hereinafter ABA Standards].

²See Id.

³ See THOMAS H. COHEN & BRIAN A. REAVES, BUREAU OF JUSTICE STATISTICS, PRETRIAL RELEASE OF FELONY DEFENDANTS IN STATE COURTS 3 (2007) available at http://bjs.ojp.usdoj.gov/content/pub/pdf/prfdsc.pdf [hereinafter Bureau of Justice Statistics Report].

⁴ See Id.

⁵ Bureau of Justice Statistics Report 4, *supra* note 3.

⁶ Id.

⁷ See Id.

¹¹ The Sentencing Reform Act of 1984, 18 U.S.C. §§ 3551 et seq.

¹² The Fair Sentencing Act of 2010, Pub. L. No. 111-220.

¹³ Infra page 17.

¹⁴ GERALDINE NAGY, TRAVIS COUNTY PRETRIAL SERVICES OVERVIEW available at

¹⁵ HARRIS COUNTY PRETRIAL SERVICES, ANNUAL REPORT 3 (2009) available at

http://www.hctx.net/CmpDocuments/59/Annual%20Reports/2009%20Annual%20Report-Rev10-2010.pdf. ¹⁶ See Bureau of Justice Statistics Report 2, supra note 3.

- ¹⁷ See Id. at 3.
- ¹⁸ Id.

¹⁹ See TEX. CODE CRIM. PROC. ANN. art. 17.03; Harold Don Teague, The Administration of Bail and Pretrial Freedom in Texas, 43 TEX. L. REV. 356, fn 144 (1965) (discussing the present version of TEX. CODE CRIM. PROC. ANN. art. 17.03 as it was then worded pending adoption). ²⁰ See Id. at 3.

²¹ Id.

²² See TEX. CODE CRIM. PROC. ANN. art. 17.03; Harold Don Teague, The Administration of Bail and Pretrial Freedom in Texas, 43 TEX. L. REV. 356, fn 144 (1965) (discussing the present version of TEX. CODE CRIM. PROC. ANN. art. 17.03 as it was then worded pending adoption). ²³ Bureau of Justice Statistics Report 2, supra note 3.

²⁴ Id. at 1.

²⁵ Bureau of Justice Statistics Report 2, *supra* note 3; Texas State data was compiled from data obtained by a series of surveys issued by the Texas Criminal Justice Coalition (an assumption is made that equates the number of jail admissions to arrests).

²⁶ See TEX. CODE CRIM. PROC. ANN. art. 17.03.

²⁷ Steven Kreytak, District Judge's High Use of Personal Bonds Singled Out, AMERICAN-STATESMAN, Nov. 20, 2010, available at http://www.statesman.com/news/statesman-investigates/district-judges-high-use-of-personalbonds-singled-1063239.html?viewAsSinglePage=true. ²⁸ Id.

²⁹ TEX. CODE CRIM. PROC. ANN. art. 17.03.

³⁰ Barry Mahoney, et al, Pretrial Services Programs: Responsibilities and Potential, Mar 2001 at 61 available at https://www.ncjrs.gov/pdffiles1/nij/181939.pdf. It is unclear if the vesting of more authority in a pretrial services division would counteract the final authority of a judicial body.

³¹ Bureau of Justice Statistics Report 2, supra note 3.

³² U.S. Const. Amend. VIII.

³³ TEX. CODE CRIM. PROC. ANN. art. 17.15.

³⁴ See HARRIS COUNTY CRIMINAL COURT AT LAW, RULE 9 SCHEDULE OF BAIL AMOUNTS available at http://www.ccl.hctx.net/attorneys/BailSchedule.pdf.

³⁵ Bureau of Justice Statistics Report 3, supra note 3.

³⁶ HARRIS COUNTY PRETRIAL SERVICES, ANNUAL REPORT 2010.

³⁷ See Harris County Pretrial Services, Annuâl Reports 2010.

³⁸ See HARRIS COUNTY CRIMINAL COURT AT LAW, RULE 9 SCHEDULE OF BAIL AMOUNTS available at http://www.ccl.hctx.net/attorneys/BailSchedule.pdf.

³⁹ HARRIS COUNTY PRETRIAL SERVICES, ANNUAL REPORT 2010 at 3.

⁴⁰ See Harris County Pretrial Services, Annual Report 2010.

⁴¹ HARRIS COUNTY PRETRIAL SERVICES, ANNUAL REPORT 2010. This number is reached by adding the differential data for both felony (23,968) and misdemeanor (28,999) defendants. ⁴² See HARRIS COUNTY CRIMINAL COURT AT LAW, RULE 9 SCHEDULE OF BAIL AMOUNTS

⁴⁴ *Id*.

⁴⁵ See HARRIS COUNTY PRETRIAL SERVICES, ANNUAL REPORT 2010 at 12

⁴⁶ Janis Bane & David A. Jones, Harris County Pre-Trial Services: Policies and Practices, Harris County Jail Reduction Committee (2011) at 4 (citing the Office of Budget Management).

⁴⁷ See Harris County Pretrial Services, Annual Report 2010.

⁴⁸ HARRIS COUNTY PRETRIAL SERVICES, ANNUAL REPORT 2010 at 7.

⁴⁹ Bureau of Justice Statistics Report 7, *supra* note 3.

⁵⁰ Id.

⁵¹ See HARRIS COUNTY PRETRIAL SERVICES, ANNUAL REPORT 2010 at 7.

⁵³ See Id.

⁵⁴ Bureau of Justice Statistics Report 7, *supra* note 3.

⁵⁵ Id. at 5.

⁵⁶ Id.

⁵⁷ Id. at 8.

⁵⁸ Id. at 9.

⁵⁹ Id.

⁶⁰ See Harris County Pretrial Services, Annual Report 2010 at 7

⁶¹ See id.

⁶² Infra page

⁶³ See Texas Commission on Jail Standards, Abbreviated Population Report for 1/1/2012 (2012).

⁶⁴ Chris Moran, Harris County Looks for Cheaper Jail Cells, HOUSTON CHRONICLE, June 9, 2010.

⁶⁵ Editorial: Dallas County Botches Collections From Bail Bondsmen, THE DALLAS MORNING NEWS, July 5, 2011 available at http://www.dallasnews.com/opinion/editorials/20110705-editorial-dallas-county-botches-collections-from-bail-bondsmen.ece.

⁶⁶ Lise Olsen, Bail Bonds are Big Business, but Not All Pay Up, HOUSTON CHRONICLE, Feb. 22, 2010 available at http://www.chron.com/news/houston-texas/article/Bail-bonds-are-big-business-but-not-all-pay-up-1707202.php.

⁶⁷ Ed Timms & Kevin Krause, *Smaller Texas Counties Struggle with Bail Bond Regulation*, THE DALLAS MORNING NEWS, Dec. 28, 2011 *available at* http://www.dallasnews.com/news/local-news/20111228-smaller-texas-counties-struggle-with-bail-bond-regulation.ece?action=reregister.

⁶⁸ See Eva Ruth Moravec, *Disputes Over Jail Staffing May Move Closer to Resolution*, SAN ANTONIO EXPRESS, Dec. 20, 2011 *available at* http://www.mysanantonio.com/news/local_news/article/Disputes-over-jail-staffing-may-move-closer-to-2413602.php.

⁶⁹ Vanesa Brashier, County's jail inmate population down, but companies now asking for more money per inmate, YOURHOUSTONNEWS.COM, Jan. 21, 2012 *available at* http://www.yourhoustonnews.com/cleveland/news/county-sjail-inmate-population-down-but-companies-now-asking/article_a95463f6-972d-5966-83a1-7d14f628b7bf.html. ⁷⁰ Bureau of Justice Statistics Report 4, *supra* note 3.

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