

# House County Affairs & Criminal Jurisprudence Committee Interim Hearing – September 21, 2016

Interim Charge: Pretrial Service & Bonding Practices



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# Texas Has a Long History with Bail

- Declaration of Independence
  - “Incarcerated in a dungeon, for a long time, one of our citizens”
- Bill of Rights
  - Provisions to ensure that individuals arrested would be bailable without excessive bail
- Texas Constitutions
  - Art. 1, §11 - Bailable by sufficient sureties
  - Innocent until proven guilty

“In our society liberty is the norm, and detention prior to trial...is the carefully limited exception.”

*United States v. Salerno*, 481 U.S. 739,755 (1987)



# What is Bail?

- Security given by the accused
  - By person charged with a crime, or by another person on his/her behalf
- That the accused will appear and answer before the proper court the accusation brought against him/her
- In exchange for release from custody awaiting trial
- Includes a bail bond
  - Written undertaking by defendant and sureties for the appearance of the defendant before the court
  - Commonly known as surety bond
- Includes cash bond
  - Deposit

“Bail was designed to secure the appearance of the defendant in court at his trial.” *Ex Parte Vance* (Cr.App. 1980) 608 S.W.2d 681



# Types of Bail

- Bail bond
  - Written undertaking by defendant and sureties for the appearance of the defendant before the court
  - Commonly known as surety bond
  - Surety company may write bonds for defendants up to amount of collateral
  - No exchange of funds with court, unless there is a forfeiture
  - Defendant makes payment to the surety company
  - Primary type of bail used currently
- Cash bond
  - Deposit of full amount of bond with the court in lieu of securities
  - Funds returned to defendant upon compliance with conditions of bond
- Personal Bond
  - Release on personal recognizance without sureties or other surety



# Who sets Bail?

- Any magistrate in Texas may set bail
- CCP Art. 2.09 defines magistrates
  - Supreme Court Justices
  - Court of Criminal Appeals judges
  - Court of Appeals justices
  - District Judges
  - County Court at Law Judges
  - Statutory Probate Judges and Associate Statutory Probate Judges
  - County Judges
  - Justices of the Peace
  - Municipal Judges
  - Mayors and recorders of the municipal courts
  - Associate Judges and Magistrates in certain counties
  - Associate Judges and Magistrates appointed under Govt Code Ch. 54 & 54A

**3,300+ Judges**



# When is bail set?

- Warrantless Arrest
  - At initial appearance before the magistrate
- Arrest on Issued Warrant
  - Bail may be set when warrant issued or
  - At initial appearance before the magistrate
- Appearance before a magistrate must occur no later than 48 hours after arrest
- Preset Bond Schedules may allow bonding prior to magistration
  - State law allows individuals to be released from jail prior to appearance before magistrate through a bail bond pursuant to a preset bond schedule.
- Mental Health Personal Bonds
  - Requires magistrates to release defendants with mental illnesses charged with non-violent offenses on personal bond (certain exceptions)
  - Community-based treatment required while on bond



# Bail can only be withheld in limited circumstances

- Texas Constitution guarantees bail except for limited circumstances
- Bail may be withheld for the following reasons:
  - Capital offenses when the proof is evident
  - Accused of felony with two prior felony convictions
  - Accused of felony while on bail for a prior felony
  - Accused of felony with deadly weapon with previous felony conviction
  - Accused of violent sexual offense while on probation for a felony
  - Accused of felony or family violence and violation of a condition of release pending trial related to safety of victim or community
  - Violation of active family violence protective order
- Bail may not be denied based upon risk of flight or risk to the community



# What statutory factors do magistrates use in setting bail?

- May consider any factor relevant to the fixing of bail
- That bail should be high enough to ensure the presence of the defendant when required
- That bail not be so high as to be oppressive
- The nature of the offense and circumstances under which it was committed
- The ability to make bail
- The future safety of a victim of the alleged offense and the community





# What information do judges have in determining bail?

- Varies by jurisdiction
- Charge for arrested offense (always)
- Name of defendant (typically present before judge)
- May have some of the following:
  - Criminal History of defendant
  - Risk Assessment Information
  - Employment Information
  - Family Information
  - Residence Information
  - Previous Failure to Appear Information
  - Mental Health Screening/Assessment Information
  - Other



# What is involved in Pretrial Risk Assessment?

- Empirically-derived tool that has demonstrated through empirical research study to predict likelihood of appearing in court and not danger to community
- Assist in determining:
  - Release or detention pretrial
  - Assignment of appropriate release conditions, such as pretrial supervision
- Risk Factors - Criminal History, Stability/Community Ties
- Interview-based
  - Requires staff to visit with every defendant
- Non-interview based
  - Doesn't require staff to visit with every
  - Ex. Arnold Foundation Public Safety Assessment (PSA)

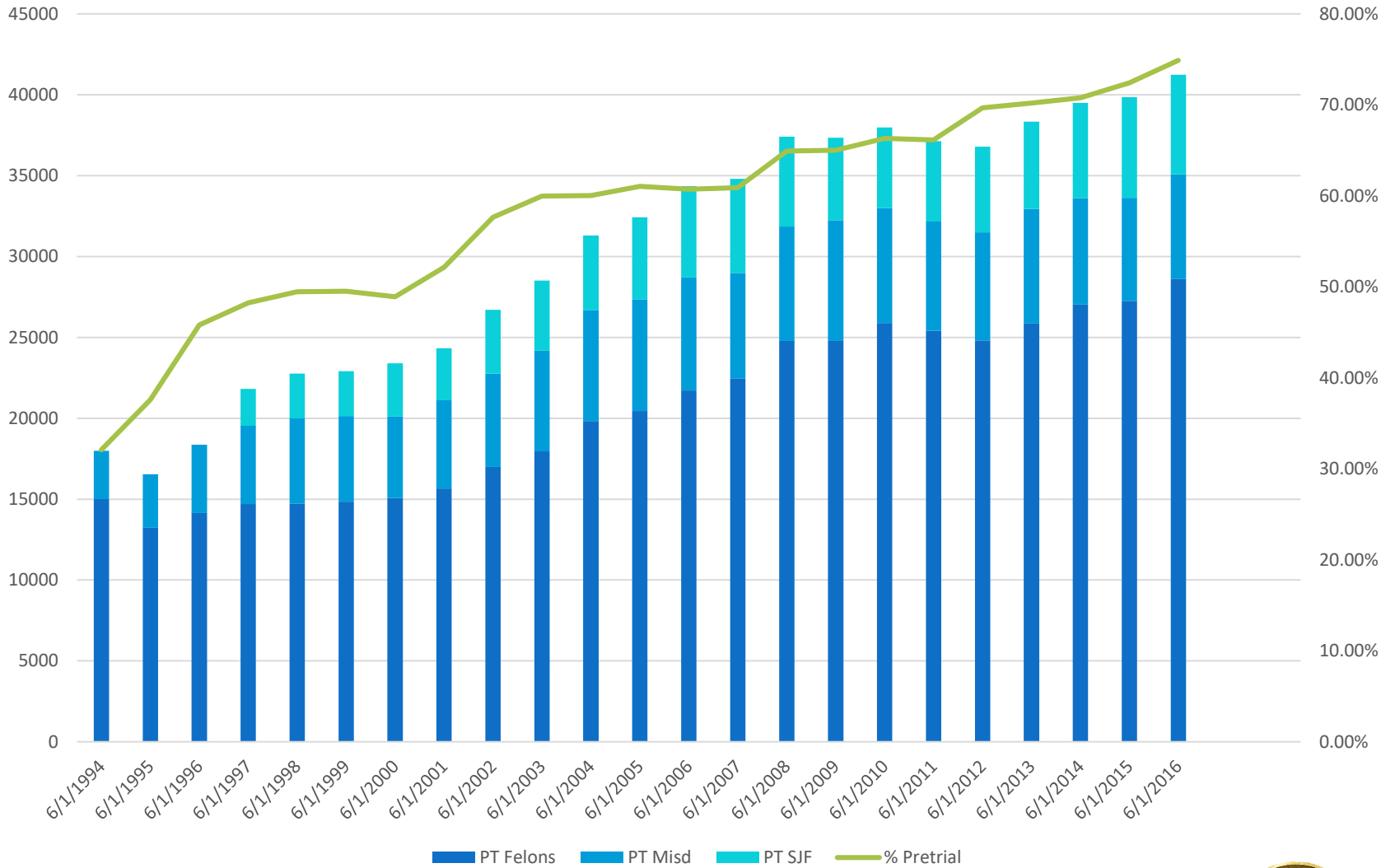


# Pretrial Supervision

- County Commissioners Court may establish personal bond office
  - Multi-county district courts can as well
  - Funded solely by counties
  - Court required to assess personal bond fee of \$20 or 3% of bail amount, whichever is greater (may be waived or reduced for good cause)
  - Very few of these exist
- Probation-operated
  - 2011 - Limited by CJAD to 10% of 1.0 FTE for each department
- Role is to monitor compliance with non-monetary conditions
  - Interlock devices
  - No contact orders
  - Court date reminders



# Pretrial Population in Texas Jails by Year



# Pretrial Detention Impacts on Outcomes in Criminal Cases

- Increased likelihood of conviction
  - Primarily due to increase in guilty pleas
  - Similar cohort had otherwise been acquitted or cases dismissed
- Higher court costs
- Longer incarceration sentences
- Differences noted for both felonies and misdemeanors
- Regardless of age or race
- Particularly large for 1<sup>st</sup> and 2<sup>nd</sup> time arrestees



# Pretrial Detention Impacts on Future Recidivism

- Right-size supervision practices is important
- Oversupervision has unfavorable impacts on recidivism
- Pretrial detention of low- and moderate-risk defendants increases recidivism
  - 2-3 days – low-risk defendants 40% more likely to commit new crimes before trial than those held no more than 24 hours
  - 8-14 days – 51% more likely to commit another crime within 2 years after completion of case
- Research on post trial detention points to reasons
  - Destabilization of the defendant
  - Destabilization of the family



# Local Government Fiscal Ramifications

**41,470  
inmates**

**Avg Cost per  
Day: \$60.12**

**\$2.5 million/day**

**\$910 million / year**



# TJC Criminal Justice Committee

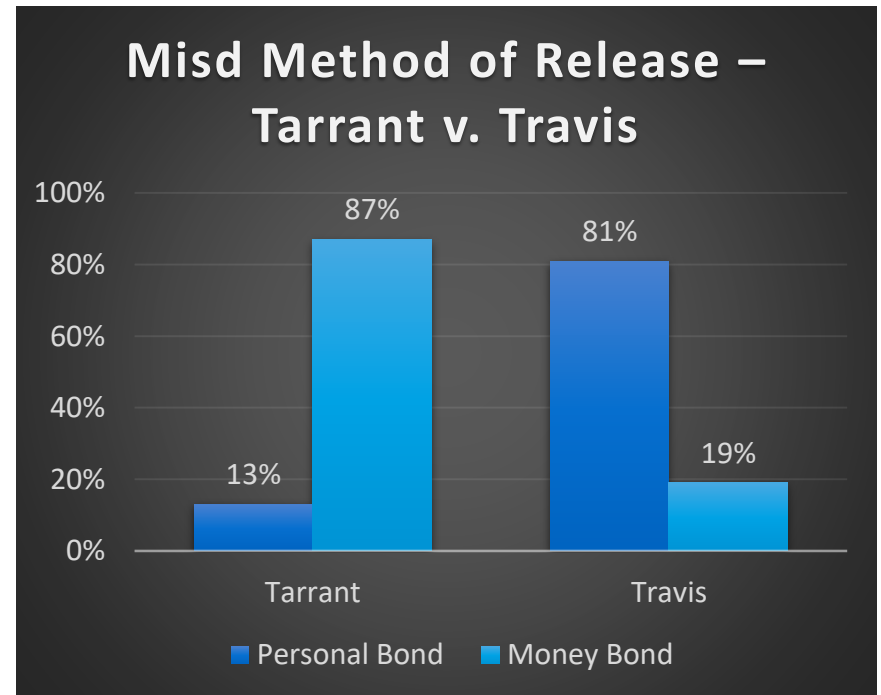
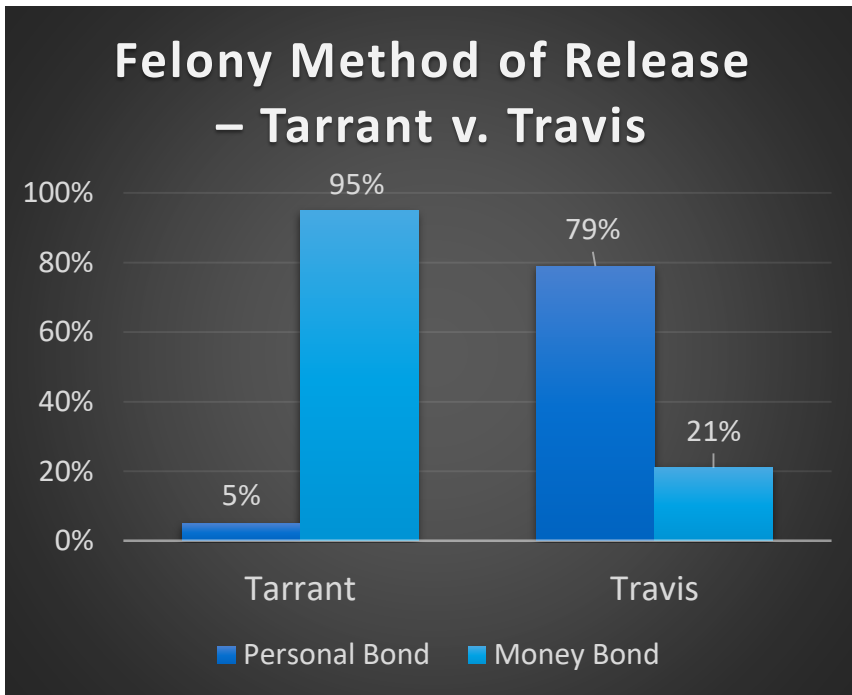
- Formed in June 2015 by Chief Justice Hecht
  - “Assess the impact of pretrial criminal justice statutes and policies to determine ways to enhance public safety & social outcomes when making pretrial confinement decisions”
- Studying Texas statutes and practices
- Reviewed data
- Initiated quantitative and qualitative study with Texas A&M Public Policy Research Institute
- Developing findings and recommendations



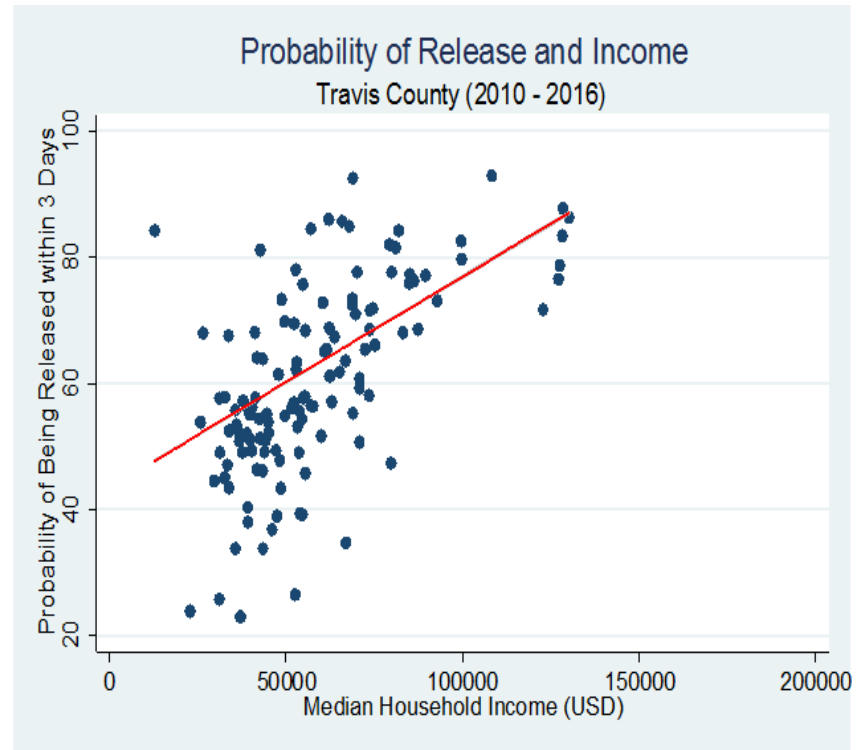
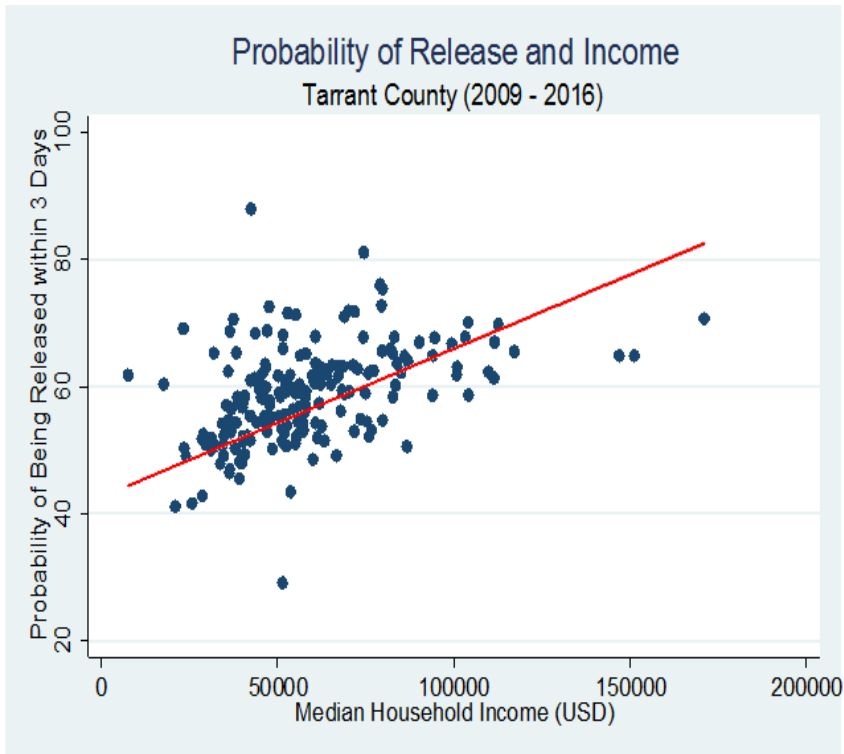


# PPRI Study Initial Findings

- Studied all Class B & higher cases between 2009-2016
  - Travis County: 183,353
  - Tarrant County: 205,289



# Three Day Release vs. Household Income



- Tarrant – Release closely associated with income
- Tarrant – Release less associated with income



# PPRI Qualitative Study

- Surveying to find out practices in local jurisdictions
- How often is citation used in lieu of arrest?
- How is bond determined?
- How many jurisdictions have personal bond as objective?
- How long is the wait for pretrial release?
- How are conditions of pretrial supervision determined?
- What is the cost of release and supervision for defendants?
- Who administers pretrial programs?
- Who pays for pretrial programs?



# TJC Draft Findings – Pretrial bail decision-making

- Is primarily void of evidence-based pretrial risk assessment with which to determine the defendant’s flight risk or risk to public safety.
- Addresses ensuring that the defendant will appear and answer the accusation brought against him/her most often through a monetary condition of release.
- Prohibits managing the risks of pretrial misconduct through the denial of bail. For all defendants charged with a crime, with certain few exceptions, the Texas Constitution requires a bail to be set or the defendant released.
- Is primarily dependent upon a defendant’s ability to post money bail, which, in turn, is dependent upon his/her financial resources.
- Results in detention of poor defendants who present low risks of flight or danger to the community.
- Results in release of more affluent defendants who present severe risks of flight or danger to the community.
- Attempts to mitigate risk of flight or danger to the community through nonmonetary conditions of release, such as interlock devices on vehicles and “no contact” conditions, or through the setting of a high amount of monetary bail.
- Is dependent upon the defendant’s compliance with nonmonetary conditions to protect the public.
- Is ineffective in ensuring the defendant’s compliance with nonmonetary conditions due to a lack of supervision in place to monitor the defendant’s compliance with nonmonetary conditions.



# TJC Draft Recommendations

- **Recommendation 1:** The Legislature should require defendants arrested for jailable misdemeanors and felonies to be assessed using a validated pretrial risk assessment prior to appearance before a magistrate under Article 15.17, Code of Criminal Procedure.
- **Recommendation 2:** The Legislature should amend the Texas Constitution bail provision and related bail statutes to provide for a presumption of pretrial release, leaving discretion with judges to utilize all existing forms of bail.
- **Recommendation 3:** The Legislature should amend the Texas Constitution and enact related statutes to provide that defendants posing a high flight risk and/or high risk to community safety may be held in jail without bail pending trial after certain findings are made by a magistrate and a detention hearing is held.



# TJC Draft Recommendations (cont)

- **Recommendation 4:** The Legislature should provide funding to ensure that pretrial supervision is available to defendants released on a pretrial release bond are adequately supervised.
- **Recommendation 5:** The Legislature should provide funding to ensure that magistrates making pretrial release decisions are adequately trained on evidence-based pretrial decision-making and appropriate supervision levels.
- **Recommendation 6:** The Legislature should ensure that data on pretrial release decisions is collected and maintained for further review.



# TJC Draft Recommendations (cont)

- **Recommendation 7:** The Legislature should expressly authorize the Court of Criminal Appeals to adopt any necessary rules to implement the provisions enacted by the Legislature pursuant to these recommendations.
- **Recommendation 8:** The Legislature should provide for a sufficient transition period to implement the provisions of these recommendations.



Questions?

