

# LIBERTY AND JUSTICE: PRETRIAL PRACTICES IN TEXAS

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**LIBERAL ARTS**  
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# LIBERTY AND JUSTICE: PRETRIAL PRACTICES IN TEXAS

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*On March 24, 2017, Part II of this report was amended to add a sixth Texas jurisdiction using validated pretrial risk assessment.*

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# TEXAS JUDICIAL COUNCIL

## **Criminal Justice Committee**

In June 2015, the Texas Judicial Council established the Criminal Justice Committee to assess the impact of pretrial criminal justice statutes and policies in Texas to determine if there are ways in which Texas courts can enhance public safety and social outcomes when making pretrial confinement decisions, and identify judicial policies or initiatives that could be enacted to further those goals. The members of the committee are:

District Court Judge Kelly Moore, Chair  
Presiding Judge Sharon Keller  
Senator Brandon Creighton  
Representative Andrew Murr

District Court Judge Scott Jenkins  
Justice Court Judge Bill Gravell, Jr.  
Mr. Carlos Amaral

## **Advisory Committee**

The committee appointed an advisory committee to assist in its efforts. The members are:

Don Allred, County Judge, Oldham County  
Sam Bassett, President, Texas Criminal Defense Lawyers Association  
Rebecca Bernhardt, Executive Director, Texas Fair Defense Project  
Danette Castle, Chief Executive Officer, Texas Council Community Centers  
Tony Fabelo, Director, Research, Justice Center, Council of State Governments and Senior Fellow, Meadows Mental Health Policy Institute of Texas  
Irma Guerrero, Division Director, Travis County Pretrial Services  
Brian Hawthorne, Sheriff, Chambers County  
Jay Jenkins, Harris County Project Attorney, Texas Criminal Justice Coalition  
Marc Levin, Director, Center for Effective Justice & Right on Crime, Texas Public Policy Foundation  
Mike Lozito, Director Judicial Services, Bexar County Pretrial Services  
Teresa May, Director, Harris County Community Supervision & Corrections Department  
Mary Mergler, Director, Criminal Justice Project, Texas Appleseed  
Alfredo Padilla, Magistrate, Cameron County  
Dean Stanzone, Court Administrator, Lubbock  
Sandy Guerra Thompson, Alumnae College Professor of Law and Director, Criminal Justice Institute - University of Houston Law School  
Bronson Tucker, Program Attorney, Texas Justice Court Training Center  
Ryan Turner, General Counsel & Director of Education, Texas Municipal Courts Education Center  
Tim Vasquez, President, Texas Police Chiefs Association and Chief of Police, San Angelo  
Carey Welebob, Director, Community Justice Assistance Division, Texas Dept. of Criminal Justice  
Sharen Wilson, District Attorney, Tarrant County





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## **Travis County**

### **Travis County Community Supervision and Corrections Department**

Rodolfo Pérez, Jr.	Director
Charles Robinson	Past Director
Irma Guerrero	Division Director
Patrick Kennealy	Senior Planner
Cynthia Rodriguez	Administrative Associate
Michelle Gable	Senior Financial Analyst

### **Travis County Criminal Courts**

Debra Hale	Director of Court Management
Margaret Ledyard	Business Analyst III, Travis County

### **Travis County Counseling and Education Services**

Teresa Goff	Administrative Services Director
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### **Travis County Community Justice Services**

Aimee Sharp	Administrative Services Division Director
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### **Travis County Information Technology Services**

Sandra Gottner	Application Support Division Manager, Travis County
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## **Tarrant County**

### **Tarrant County Pretrial Services**

Michelle Brown	Director
Dexter Hall	Supervisor
Elisa Sanders	Supervisor

### **Tarrant County Community Supervision and Corrections Department**

Leighton Iles	Director
Michelle Espy	Budget and Program Coordinator
Steven Powell	Operations Manager

### **Tarrant County Information Technology Services**

Sharon Coleman	Senior IT Resource Manager
Joseph Martin	Lead Data Architect
Ann Wynn	Senior Data Architect

### **Tarrant County Sheriff**

Jerry Rucker	Records Manager
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# **EXECUTIVE SUMMARY**



# EXECUTIVE SUMMARY

In most Texas counties, ability to pay financial bail determines which defendants will be released until adjudication of criminal charges. Increasingly, however, policymakers, judges, and other stakeholders are asking whether release based on a defendant's individualized risk might be a better way to ensure court appearance and prevent new criminal activity among people on bond.

In October 2016, the Texas Judicial Council's Criminal Justice Committee reviewed the evidence and produced a report advocating expansion of risk-informed release and personal bond. To inform their decision-making and test the potential impacts of this policy guidance, the Council asked the Public Policy Research Institute at Texas A&M University to conduct a two-part study gathering evidence from Texas jurisdictions. The following sections summarize findings and conclusions.

## PART I: Evidence from Two Jurisdictions

To compare financial and risk-based pretrial systems, 3.5 years of criminal case data from Tarrant and Travis Counties were studied. Tarrant County determines pretrial release almost exclusively by means of financial bond; a small Pretrial Services Department screens and monitors personal bond for only 6% of defendants. Travis County uses validated risk assessment to identify low-risk people for release without financial requirements. Analyses contrasting the experiences of these two jurisdictions yielded five major findings. Overall, results indicate pretrial risk assessment can save money, strengthen public safety, and improve outcomes for defendants.

### **FINDING 1: Validated pretrial risk assessment successfully predicts defendants' chance of bond failure.**

This research finds pretrial risk assessment can fulfill its promise to help jurisdictions identify defendants at greatest risk of bail failure. Among people released from detention in Travis County, a higher ORAS-PAT assessment score is associated with a greater chance of both bond forfeiture and of new criminal activity. In addition, the ORAS-PAT score was found to accurately predict the courts' actual detention decision, which implies that judges are using assessment results as intended to inform and individualize requirements for each defendant. Each of these components – valid assessment protocols and reliable implementation – are key to risk-informed defendant classification.

### **FINDING 2: Decisions to release or detain defendants can be obtained using a lower-cost statistical algorithm instead of an interview-based risk assessment.**

While the ORAS-PAT is an effective decision tool, it requires interviews with defendants and others, which can be resource-intensive. This study found that an automated risk determination based entirely on data elements currently available in the Travis County information system achieved similar results at lower cost, significantly increasing the feasibility of risk-informed release in many counties.

For statewide implementation, an automated algorithm that determines empirical risk, such as the Laura and John Arnold Foundation's Public Safety Assessment-Court tool, could be used to inform pretrial release decisions without interviews. While an automated algorithm can make risk assessment attainable in many jurisdictions,

the introduction of such a tool should be accompanied by technical support to help counties ensure appropriate data elements are available and that the validated protocol is followed.

### **FINDING 3: Validated risk assessment results in better pretrial classification: fewer high-risk defendants are released, and fewer low-risk individuals are detained.**

Although Finding 1 shows that risk assessment can predict which individuals will succeed on bond, it is important to ask how much a validated instrument improves the subjective decision processes already being used by courts. A statistical model was constructed to calculate each individual's chance of bail failure. The risk-informed and financial-based systems were then compared on their ability to match this model in practice, releasing low-risk defendants and holding those who might cause harm in the community.

In the financial bail system, the custody decision matched actual risk for 72% of defendants, but use of a risk assessment tool improved the successful classification rate to 77%. Among people released, 12% more of those in the money-based system had a statistical risk profile indicating they might threaten public safety (19% versus 17%). Conversely, among people detained, 24% more (46% versus 37%) could have been safely released compared to the risk-informed system. These results show that the use of valid risk assessment can help judges make more accurate release decisions.

### **FINDING 4: The costs of a risk-informed pretrial release system are more than offset by savings that occur when defendants are properly classified.**

To quantify the potential return on investing in risk-based pretrial release protocols, the study posed two questions: how much more does it cost to integrate risk assessment into detention and supervision decision-making, and what savings are returned as a result?

Both Travis and Tarrant Counties provide administrative and operational support for personal and surety bond assessment and supervision, though the cost is three times greater in Travis County's risk-informed release system. Most other costs, largely paid by defendants, include the cost of surety bonds, monitoring devices and testing required as a condition of release and, in Travis County, evaluation and counseling for people with therapeutic risks affecting their chance of success on bond.

These pretrial program costs are more than 1.5 times higher where risk assessment is used: \$406 per defendant compared to \$263 in the money-based system. However, improved defendant classification generates significant savings in every other cost category measured.

Case processing costs are 5% lower where risk assessment is used. These include re-arrest, court hearings, prosecution, and indigent defense costs attributable to bond failure. Bail forfeiture rates are lower in the financial release system, but more new crimes are committed by people on bond.

Victim costs are 72% lower where risk assessment is used. More crimes committed by people on financial release are felonies, and they are more often violent.

Detention costs are 23% lower where risk assessment is used. Defendants spend longer in jail on average following arrest in the financial release system. They also spend more days detained for new offenses while on bond.



Misclassification costs are 76% lower where risk assessment is used. These are costs incurred for the release of high-risk or detention of low-risk defendants net of expected cost for proper placement of a person of the same risk. Overall, 14% of total pretrial costs are attributable to misclassification in the financial release system compared to just 5% of pretrial expenditures in the risk-informed system.

Total costs are 30% lower where risk assessment is used. Total pretrial costs are \$2,134 in the jurisdiction using risk-informed pretrial release compared to \$3,083 where release is determined by ability to pay a financial bond.

These data show that investment in risk-informed pretrial assessment and supervision – in this case a difference of approximately \$100 per defendant – makes sense. The payoff is a reduction in overall pretrial costs by nearly one-third. Savings are primarily due to lower rates of new criminal activity committed by high-risk people inappropriately released. Additional savings also accrue from low-risk individuals who are more likely to be released on personal bond and shorter detention periods following arrest.

#### **FINDING 5: A risk-informed pretrial release system is fairer for defendants.**

Where pretrial custody is determined by risk, people are less likely to be incarcerated due to poverty; 10 times more people are released on a non-financial personal bond. In the money-based system, more than twice as many people are incarcerated on a bail of \$2,000 or less; three times as many are held on a bail at or below \$500.

Not only are more people detained on a low bond in the financial release system, but a higher proportion of those defendants have a statistically low risk of bond failure. Stated differently, three times more people in the financial release system would likely succeed if released but remain in jail because they cannot pay \$200 or less for a commercial bond. Importantly, each additional day of detention up to 30 days increases the already high likelihood of conviction by 2% in both Tarrant and Travis Counties.

## **PART II: Survey of Pretrial Processing in Texas**

To learn about pretrial practices in current use statewide, a survey was conducted of judges and professionals experienced with pretrial programs. Respondents were asked about risk assessment, personal bond supervision, and surety bond supervision. They were also asked their views on the benefits and challenges of expanding risk-informed pretrial release statewide. Results are organized in three major findings.

#### **FINDING 6: Despite advantages in terms of safety, cost, and fairness, only six Texas counties currently use validated pretrial risk assessment.**

Although 25 counties report assessing pretrial risk, only six report using a validated instrument that can reliably predict defendants' risk of flight and threat to public safety. Judges state that the tools now available to inform the custody decision are inadequate. Most are reluctant to describe the data available to the court as "very reliable" and they are not confident that resulting decisions promote either safety or court appearance. Lack of validated risk assessment tools was identified as a specific obstacle to better decision-making by more than half of survey respondents.

If policymakers wish to expand the use of pretrial risk assessment, however, the survey suggests jurisdictions may need training regarding the intent and operation of risk-informed pretrial release. While a small number of counties use pretrial assessment for broad-based release on personal bond, others consider it a means to clear jails of people who are unable to post surety bond. If jurisdictions are to fulfill the potential for risk-informed release to reduce bail failure, save costs, and improve safety, stakeholder education will be required to alter current thinking and practice.

### **FINDING 7: Pretrial personal bond or surety bond supervision programs were identified in 100 Texas counties. Most of these programs are implemented by existing Community Supervision and Corrections Departments (CSCD).**

While just 10% of counties have any experience with pretrial risk assessment, nearly 40% report some capacity for pretrial supervision. About half monitor a small number of defendants at the request of the courts, while the remainder operate larger county-funded programs. The large majority of pretrial supervision programs are operated through the statewide network of CSCDs, building upon their responsibilities monitoring adult probationers. Just one in five programs is operated by independent departments.

A range of monitoring options is available to help “right-size” supervision requirements to address the personalized risks of individual defendants. While in-person reporting and random drug testing are the most commonly available forms of monitoring, low-level check-ins and court date reminders are also widely available. Counseling may also be available at defendant expense for substance abuse, mental health, or domestic violence risk factors.

Defendants commonly pay some or all of the costs of monitoring. Monthly supervision fees are charged by about four of every five personal or surety bond supervision programs. Validated risk assessment can help the courts make pretrial services more cost-effective by directing monitoring resources where they are most likely to meaningfully address specific risks.

### **FINDING 8: Stakeholders are optimistic about the feasibility of pretrial reform including validated risk assessment and personal bond supervision.**

Although risk assessment is not currently well-integrated into pretrial processing, survey respondents were optimistic that reform is achievable. Stakeholders expressed great confidence about the feasibility of personal bond monitoring, possibly because the CSCD network provides a solid base for existing and new supervision capacity. They were less certain about the feasibility of validated risk assessment. Few jurisdictions have experience with evaluating objective risk, and many expressed concern about whether sufficient funding will be available to support the transition to new practices. Still, a majority of respondents would not oppose adopting a pretrial risk tool if one was made available statewide.

## **CONCLUSIONS**

In light of results presented here, this study finds the steps for bail reform prioritized by the Texas Judicial Council’s Criminal Justice Committee are likely to strengthen pretrial release systems, can be feasibly implemented, and offer significant benefits for jurisdictions.

Recommendation 1 regarding use of validated risk assessment is supported by survey data from judges indicating they are not fully confident in pretrial release decisions; they name the need for validated risk

assessment as a specific challenge. Findings confirm that such risk assessment tools improve judges' ability to correctly classify defendants. While risk assessment and supervision systems are costly, resulting improvements in defendant classification generates substantial savings largely from reductions in criminal activity among people on bond, and an automated statistical algorithm such as the Arnold Foundation's Public Safety Assessment-Court may further help contain costs.

Recommendation 2 regarding presumption of pretrial release through personal bond is supported by evidence that when personal bond is automatic for low-risk individuals, financial ability is effectively removed as an obstacle to release. Ten times more people are freed on non-financial terms, and fewer people remain in detention because of inability to pay a low bond.

Recommendation 3 regarding Texas Constitutional amendment to allow detention of high-risk defendants without bail is supported by evidence of higher rates of crime – particularly violent crime –when dangerous people are released on bond. The survey finds 82 jurisdictions currently operate surety bond supervision programs for the express purpose of monitoring people the courts might otherwise choose to detain.

Recommendation 4 regarding legislative funding for pretrial supervision of defendants on personal bond is supported by evidence that pretrial monitoring can potentially be implemented through the existing statewide CSCD network. At present 80% of counties that do pretrial monitoring already collaborate with local CSCDs to provide the services. Moreover, a broad range of monitoring options currently offered to adult probationers is available to match pretrial defendants with risk-appropriate interventions.

Recommendation 5 regarding training for magistrates making pretrial release decisions is supported by evidence that few counties currently have experience with either validated risk assessment or with risk-informed pretrial supervision. Survey findings show many existing personal bond programs exist to clear jails of people who prove unable to pay a financial bond rather than to achieve risk-informed release. Training is essential to help local stakeholders understand the ideals of risk assessment and personal bond, and to provide supports required to achieve the full benefits such reforms can bring.

Recommendations 6 through 8 regarding collection of pertinent data on pretrial decision processes, rulemaking authority for the Court of Criminal Appeals, and the provision of a reasonable transition period were beyond the scope of this study but seem reasonable measures to support the objectives of reform.



**LIBERTY AND JUSTICE:  
PRETRIAL PRACTICES IN TEXAS**



# INTRODUCTION

Financial bond is the primary means in most jurisdictions to guarantee court appearance and prevent new offending among people facing criminal charges. However, release based on financial ability, pervasive in Texas and nationally, is increasingly being challenged. Policymakers, judges, pretrial professionals, civil rights advocates, and others are asking if risk-based release might be a fairer and more effective way to make sure people accused of crimes meet their obligations to the court. A growing evidence base shows validated assessment does a better job ensuring that low-risk defendants are returned to the community prior to trial while dangerous people and those likely to abscond stay behind bars.

From a legal viewpoint, when people without financial resources are detained simply because of an inability to pay bail, they are denied the same access to pretrial liberty as more affluent citizens. Plaintiffs have successfully argued that requiring money for pretrial release violates the Equal Protection and Due Process clauses of the Fourteenth Amendment to the United States Constitution.<sup>1</sup>

Studies also show financial bond is also unfair. A Philadelphia study found individuals unable to pay financial bond experience a 30% higher conviction rate, driven largely by guilty pleas.<sup>2</sup> Other research shows low-risk people detained pretrial are five times more likely to get a jail sentence and four times more likely to be sentenced to prison. In the same study, sentences of incarceration were also two to three times longer for people who could not afford bail.<sup>3</sup>

From a practical perspective, releasing people without regard to risk is costly to jurisdictions and unsafe for the community. Texas counties spend \$60.12 for each day a person who poses no threat is jailed. Lengthy pretrial detention also increases the chance of future recidivism,<sup>4</sup> multiplying costs over the long term.

Objective risk assessment to determine pretrial release is increasingly viewed as a better alternative. Studies of jurisdictions using validated protocols find that low-risk defendants can succeed on bond with no oversight, while people of moderate assessed risk often need only court date reminders or occasional check-ins with a pretrial officer. For the small percentage of defendants whose risk of flight or of committing a new crime warrants supervision while on release, validated risk assessment helps ensure that limited resources are directed toward the most appropriate forms of oversight.

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<sup>1</sup> Since January 2015, Equal Justice under Law has filed ten class action challenges to financial bail systems in eight states; See <http://equaljusticeunderlaw.org/wp/current-cases/ending-the-american-money-bail-system/>. Civil Rights Corps has four additional lawsuits active lawsuits against wealth-based pretrial detention; See <http://www.civilrightscorps.org/ending-wealth-based-pretrial-detention>. See also, [https://public.tableau.com/profile/publish/FFBP2\\_0/ActivitiesByType#!/publish-confirm](https://public.tableau.com/profile/publish/FFBP2_0/ActivitiesByType#!/publish-confirm).

<sup>2</sup> Megan Stevenson, "Distortion of Justice: How the Inability to Pay Bail Affects Case Outcomes," Retrieved from <http://www.econ.pitt.edu/sites/default/files/Stevenson.jmp2016.pdf>

<sup>3</sup> Lowenkamp, Christopher T., Marie VanNostrand, and Alexander Holsinger. "Investigating the Impact of Pretrial Detention on Sentencing Outcomes." *Houston, TX: The Laura and John Arnold Foundation* (2013).

<sup>4</sup> Lowenkamp, Christopher T., Marie VanNostrand, and Alexander Holsinger. "The Hidden Costs of Pretrial Detention." *Houston, TX: The Laura and John Arnold Foundation* (2013).

## Texas Judicial Council Recommendations

In October 2016, the Texas Judicial Council's Criminal Justice Committee reviewed the evidence and produced a report advocating expansion of risk-informed release and personal bond.<sup>5</sup> The report includes the following eight 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 through personal bond, 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.
- **Recommendation 4:** The Legislature should provide funding to ensure that pretrial supervision is available to defendants released on a pretrial release bond so that those defendants 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.
- **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.

## Overview of Findings

To test the potential impacts of this policy guidance, the Council asked the Public Policy Research Institute at Texas A&M University to conduct a two-part study gathering evidence from Texas jurisdictions. The findings are presented in two parts.

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<sup>5</sup> See Texas Judicial Council. "Criminal Justice Committee Report & Recommendations." *Austin, TX: Office of Court Administration* (2016). Retrieved from <http://www.txcourts.gov/media/1436204/criminal-justice-committee-pretrial-recommendations-final.pdf>



## Part I: Evidence from Two Jurisdictions

Part I of this report compares data from two counties, Tarrant and Travis, with differing systems for pretrial release. In Tarrant County's financial release system, just 6% of all defendants get personal bond. In Travis County's risk-informed release system, by contrast, 60% of people are released prior to trial on their own recognizance. Analyses considering the practical and economic effects of this difference on jurisdictions, defendants, and communities reached the following conclusions.

- Validated pretrial risk assessment is an effective tool to predict individual defendants' chance of bail failure. Similar decisions to release or detain defendants can be obtained using a lower-cost statistical algorithm instead of an interview-based risk assessment.
- Validated risk assessment results in better pretrial classification: fewer high-risk defendants are released, and fewer low-risk individuals are detained.
- The costs of a risk-informed pretrial release system are more than offset by savings that occur when defendants are properly classified. Risk-informed pretrial practices are associated with lower rates of bond failure, less new criminal activity and less violent crime committed while on bond, and fewer pretrial jail days both due to initial detention and resulting from re-arrest on new offenses.
- A risk-informed pretrial system is fairer for defendants by effectively eliminating financial ability as an obstacle to release.

## Part II: Survey of Pretrial Processing in Texas

Part II of the report examines current pretrial practices in Texas counties and provides some insight into change that will be needed to expand the use of risk-informed release. A survey of people knowledgeable about jurisdiction practices makes the following findings.

- Despite advantages in terms of safety, cost, and fairness, only six of the state's 254 counties use validated pretrial risk assessment.
- While the state funds Community Supervision and Corrections Departments to supervise adults on probation, just one of every five counties has meaningful capacity to monitor pretrial defendants.
- Stakeholders are generally optimistic that change can occur if proper supports are provided.

Overall, this study finds strong empirical support for the pretrial reform agenda put forth by the Texas Judicial Council's Criminal Justice Committee. Findings show that with validated risk assessment, judges can make more accurate custody decisions, releasing those who qualify and detaining those with a high risk of bail forfeiture. This research will help policymakers understand the costs and advantages of risk-based pretrial release and to anticipate the scope of change required for such a transition.



**PART I**  
**EVIDENCE FROM TWO JURISDICTIONS**



# EVIDENCE FROM TWO JURISDICTIONS

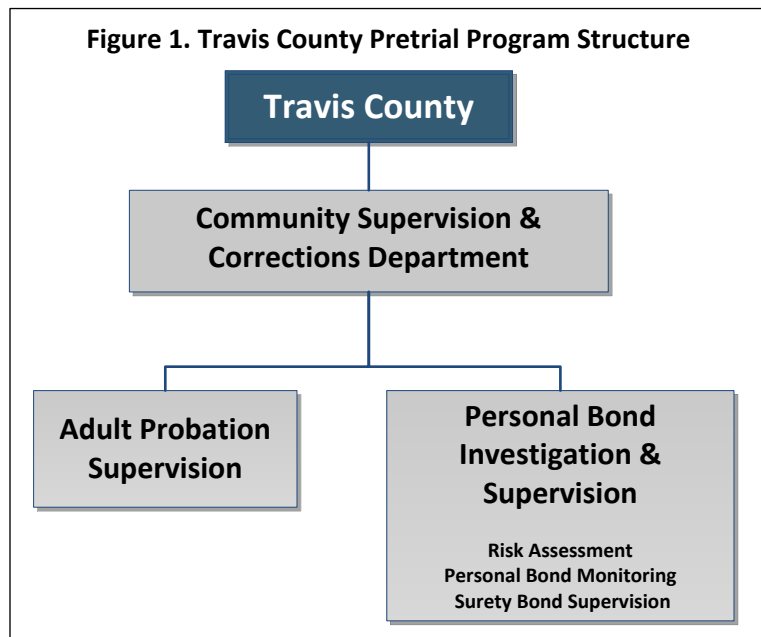
## Overview of the Study Sites

A growing body of evidence shows that using pretrial risk assessment to identify people suitable for release on personal bond enhances both the fairness and efficiency of the criminal justice process. Tarrant and Travis counties – both jurisdictions interested in advancing evidence-based public safety practices – volunteered to provide data needed to test this premise in Texas. These are the third and fifth most populous jurisdictions in Texas,<sup>6</sup> home to 2.0 million and 1.2 million residents, respectively. Both metro areas are counted among the fastest growing in the state.<sup>7</sup> Travis County has a jail population of approximately 2,600, of whom 75% are being held pretrial. Tarrant County jails currently hold about 3,400 defendants, 62% of whom are awaiting trial.<sup>8</sup>

Judicial officers in Tarrant County rely primarily on cash or surety bonds to ensure court appearance and public safety, while those in Travis County use validated risk assessment tools to give personal bond to all qualifying defendants. To investigate the impact of these processes, data was provided for 102,193 bookings in Tarrant County and 62,136 bookings in Travis County covering a 3.5-year interval from January 2013 through June 2016.

### Risk-Informed Pretrial Case Processing System: Travis County

Travis County’s Pretrial Services Division is housed administratively under the Community Supervision and Corrections Department, parallel to but separate from the Adult Probation Department (Figure 1). The county-funded pretrial program performs three primary functions: personal bond investigation, personal bond supervision, and surety bond supervision. These programs are described in the following sections. Information regarding costs of operations is provided in Table 1.



<sup>6</sup> United States Census Bureau. (2016). “Quick Facts: Travis County Texas.” Retrieved from <http://www.census.gov/quickfacts/table/SEX205210/48453>

<sup>7</sup> Ura, Alexa, and Lauren Flannery. “Suburban Population Continues to Surge.” Retrieved from *The Texas Tribune* website <https://www.texastribune.org/2016/03/24/suburban-population-counties-surge-texas/>

<sup>8</sup> Texas Commission on Jail Standards. (2017). “Texas Commission on Jail Standards – Abbreviated Population Report for 2/1/2017.” Retrieved from <http://www.tcjs.state.tx.us/docs/AbbreRptCurrent.pdf>

Table 1. Summary of FY 2015 Costs for Risk-Informed Release System (Travis County)

	Program Costs	Source of Funds
<b>Pretrial Assessment and Supervision</b>		
Personal Bond Investigation and Risk Assessment	\$1,753,718	County Budget
Personal Bond Supervision and Surety Bond Supervision	\$2,534,123	County Budget
	\$286,517	Defendant Personal Bond Fee (\$20)
<b>Counseling and Evaluation Services</b>		
Counseling and Evaluation Services (CES) Assessment	\$336,084	Defendant Assessment Fee (\$55)
Counseling and Evaluation Services (CES) Counseling <ul style="list-style-type: none"> <li>• Drug/Alcohol Education: 8-15 hours @ \$70-\$90</li> <li>• DWI Intervention: 30+ hours @ \$185</li> <li>• Batterer Intervention and Prevention Program</li> <li>• Anger Management: 8 hours @\$54</li> </ul>	\$385,065	Defendant Fee
<b>Monitoring Devices and Testing</b>		
Vehicle Interlock	3% of bond up to \$300 + \$10/month	Defendant Monitoring Fee
GPS Location Monitoring	\$10.70/day	Defendant Monitoring Fee^
Electronic Monitoring: Personal Bond	\$3.70/day	County Budget
Electronic Monitoring: Financial Bond	\$3.70/day	Defendant Monitoring Fee
Random Drug Testing	\$25/test	Defendant Monitoring Fee
Continuous Alcohol Monitoring	\$10.75/day	Defendant Monitoring Fee^

^ County pays GPS and continuous alcohol monitoring from the personal bond program budget for indigent defendants who apply.

### Personal Bond Assessment

Travis County’s Personal Bond Investigation and Supervision Program, established five decades ago, aims to identify and release low- to moderate-risk people without financial conditions if their risk score indicates they are likely to meet their pretrial obligations. The assessment protocol includes a criminal history check, review of the probable cause affidavit for use of weapons or violence in the commission of the crime, and interviews with the defendant and others who know him or her well.

In 2013, research-based assessments were integrated into processing for the first time. The primary instrument – the Ohio Risk Assessment System-Pretrial Assessment Tool (ORAS-PAT) – gathers objective information about each individual and generates a score indicating risk of flight or new criminal activity. The tool makes use of

seven factors shown by research to reliably identify people likely to do well in the community and those who should be detained until trial (see Appendix A). The factors considered are:

- Age at first arrest
- Number of failure-to-appear warrants in the past 24 months
- Three or more prior jail incarcerations
- Employed at time of arrest
- Residential stability
- Illegal drug use during the past six months
- Severe drug use problem

Personal bond assessment, a fully integrated component of book-in, is performed for four of every five defendants in Travis County.<sup>9</sup> Additional diagnostic assessments are administered to the subset of individuals who present with characteristics that might increase non-compliance. The Texas Christian University (TCU) Drug Screen checks the need for drug or alcohol treatment and the Ontario Domestic Abuse Risk Assessment (ODARA) identifies people with domestic assault charges who might benefit from counseling while their court case is pending.<sup>10</sup>

The ORAS-PAT risk score is the main source considered by pretrial officers when developing a personal bond recommendation for the court.<sup>11</sup> However, officers have the authority to consider other evidence from interviews, the arrest report, and diagnostic screenings. Because additional information is part of the review, the Travis County pretrial system is described here as “risk-informed.” Nonetheless, the use of a valid assessment protocol distinguishes this jurisdiction from money-based systems that do not systematically weigh personalized risk attributes.

The risk assessment protocol in Travis County is described by stakeholders as timely and efficient. Austin Municipal Court judges hold magistration at the Blackwell-Thurman Criminal Justice Center 24 hours a day. A “warning list” of people recently magistrated, and their bond amount, is pushed to Pretrial Services staff every few hours. For 21 hours daily, personal bond officers evaluate defendants’ chance of success upon release.

Assessment results are returned to court administration electronically. If bail set at magistration is less than \$50,000, pretrial officers include a recommendation to release or detain, and a personal bond document is prepared for a judge’s signature. If bail exceeds \$50,000, magistrate judges receive risk assessment results without a recommendation for or against release. If personal bond is not set at magistration, attorneys may request assessment results to help make the case for pretrial release in the court of jurisdiction. In Travis County then, judges have ready access to reliable information needed to make a prompt risk-informed personal bond determination.

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<sup>9</sup> Individuals not assessed include people with a bond forfeiture and those who received personal bond from the magistrate judge before the personal bond investigation was conducted.

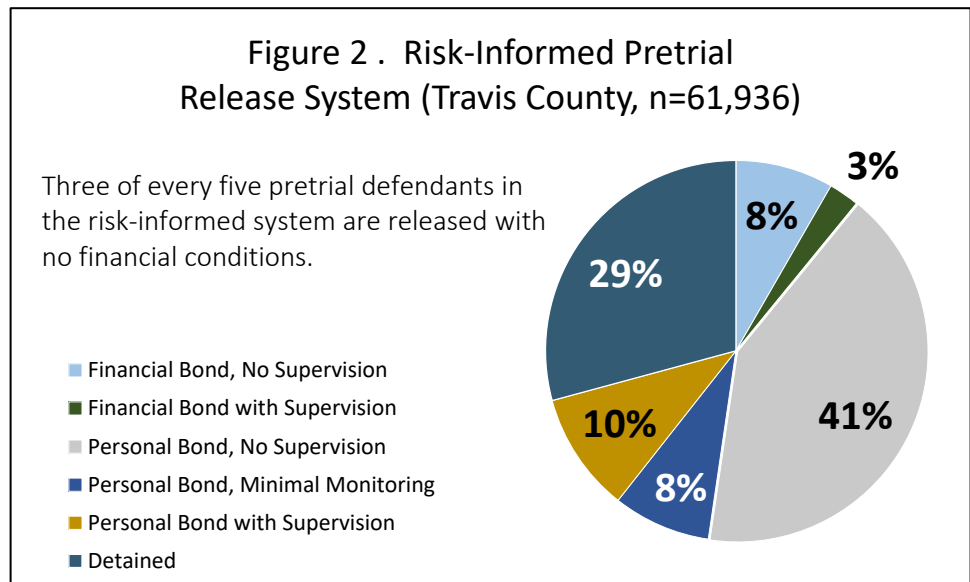
<sup>10</sup> See Institute of Behavioral Research. (2014). *Texas Christian University Drug Screen V*. Fort Worth: Texas Christian University; Knight, K. D., Dwayne Simpson, and Janis T. Morey (2002). "An Evaluation of the TCU Drug Screen." *Washington, DC: National Institute of Justice, Office of Justice Programs, US Department of Justice*. See also Ulmer, J. C. (2015). "The Ontario Domestic Assault Risk Assessment (ODARA): A Validation and Comparison Study for an Oregonian Law Enforcement Agency."

<sup>11</sup> See generally, “Part II, Finding 6.”

## Personal Bond Supervision

Figure 2 shows the large majority, nearly 60%, are released on personal bond with no financial requirements beyond a \$40 one-time fee.<sup>12</sup> Most (41%) receive no further oversight prior to trial.

An additional 8% have minimal monitoring requirements, typically involving intermittent check-ins with a pretrial officer. The type (face-to-face or by phone) and frequency of contact (weekly, bi-weekly, or only on court dates) is set at the officer's discretion.



One in ten people is required by either the courts or by statute to submit to more rigorous forms of oversight to qualify for personal bond. For these, vehicle interlock devices, electronic monitoring, GPS monitoring, continuous alcohol monitoring devices, or drug testing may be assigned as conditions of release.

Defendants with substance abuse or behavioral health concerns identified by the TCU Drug Screen or the ODARA are referred to the county's Counseling and Evaluation Services Department (CES) for a more comprehensive evaluation. Therapeutic services to help defendants make court appearances and avoid new criminal activity are required as a condition for 24% of people booked, almost all of whom are on personal bond.

## Surety Bond Supervision

Eight percent of Travis County defendants are released without oversight on a cash or surety bond. An additional 3% have formal supervision requirements (e.g., vehicle interlock, electronic, or GPS devices or drug testing) that are monitored by pretrial program staff. In general, these are individuals with a right to bail under the Texas Constitution, but who have been identified during the risk assessment process to be at risk of flight or the commission of a new crime if they are released.<sup>13</sup>

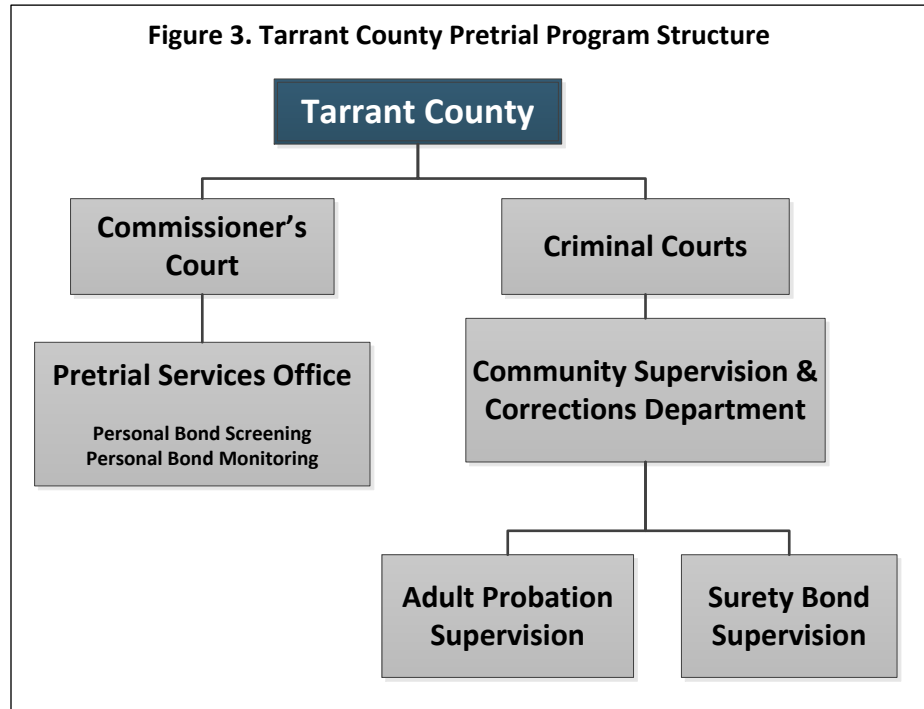
<sup>12</sup> The personal bond fee was increased from \$20 to \$40 beginning in FY 2016. Payment is due within 2 weeks of release from detention, but it may be waived for people who demonstrate they are unable to pay.

<sup>13</sup> The Texas Judicial Council's Recommendation 3 would amend the Texas Constitution to create a legal avenue to hold people with high assessed risk without bail pending trial.



## Financial-Based Pretrial Release System: Tarrant County

In Tarrant County, criminal defendants are released almost exclusively by means of financial bond. A Pretrial Services Office for personal bond was established by the courts in 1979 and relocated administratively to the Commissioners Court in 1992. The office screens people charged with a Class A or B misdemeanor or a non-violent felony for personal recognizance bonds. However, the reach of the program is limited to a small proportion of those who might be eligible. Surety bond supervision is performed by the Tarrant County Community Supervision and Corrections



Department. The following paragraphs review the operation of these programs. Figure 3 shows organizational structure with costs provided in Table 2.

### Personal Bond Assessment

In Tarrant County, Pretrial Services Officers are available to interview defendants for personal bond or supervise those being monitored between 9 and 18 hours per day, six days a week. To be considered for personal bond, people must meet criteria established by the courts (see Appendix B). They include the following:

- Offense charged
- Criminal history (an individual is not eligible for release if on probation or bond, or if they spent time in the penitentiary within ten years of the instant offense)
- Residence within 50 miles of the Tarrant County Courthouse
- Strong community ties verified by three references

If a defendant meets requirements and bail is set at \$10,000 or less, Pretrial Service Office staff may write a personal bond for consideration by the court. The office also oversees people who were not screened by program staff, but were given personal bond at the discretion of judges. Defendants pay a personal bond fee of \$20 or 3% of the bond amount, whichever is greater, though the fee may be waived with judicial authorization.

Personal bond screening in Tarrant County is limited by a highly decentralized magistration structure that can impede the timely review of an individual's pretrial status. With 36 municipalities and 30 jails to cover, pretrial officers focus their efforts largely on major population centers. Six days a week staff are on-site to screen defendants in the Tarrant County and Fort Worth jails. Face-to-face screenings occur twice weekly in Arlington,

and faxed or telephone applications are accepted daily from Arlington and Mansfield. Anyone released via faxed or telephone application is required to appear at the Pretrial Services Office within two days of release.

In smaller municipalities people might only learn about the program through signage in the jail, and responsibility for requesting a personal bond review falls to the defendant or their attorney. With arresting agencies widely dispersed throughout the county, by the time pretrial staff learn about people who are potentially eligible, more than 80% have typically posted a financial bond, often without realizing that personal bond might be an option.

Table 2. Summary of FY 2015 Costs for Financial Release System (Tarrant County)

	Program Costs	Source of Funds
<b>Pretrial Assessment and Supervision</b>		
Personal Bond Screening and Supervision	\$1,250,984	County Budget
	\$143,757	Defendant Fees: <ul style="list-style-type: none"> <li>• One-time Personal Bond Fee (greater of \$20 or 3% of bond amount)</li> <li>• Vehicle Interlock Fees</li> <li>• Scheduled Drug Test Fees</li> </ul>
Surety Bond Supervision	\$99,316	County Budget
	\$449,440	Defendant Fees: <ul style="list-style-type: none"> <li>• Surety Bond Supervision Fee (\$60/month)</li> <li>• Random Drug Test Fees</li> </ul>
<b>Monitoring Devices and Testing</b>		
Vehicle Interlock	\$10/month	Defendant Monitoring Fee
GPS Location Monitoring	\$10/day	Defendant Monitoring Fee*
Random Drug Testing	\$12/test	Defendant Monitoring Fee
Scheduled Drug Testing	\$12/test	Defendant Monitoring Fee

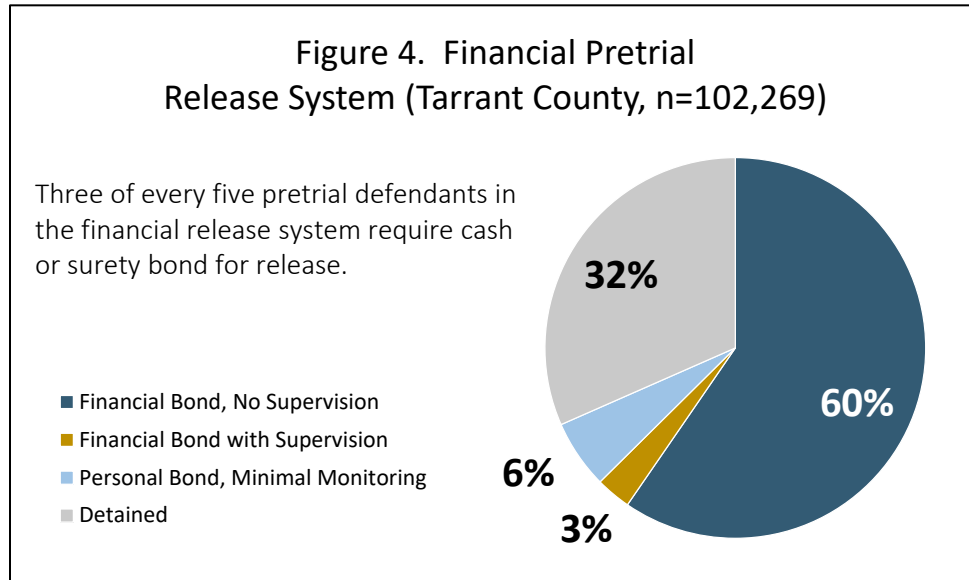
\* Fee paid to third-party provider.

### Personal Bond Supervision

Tarrant County’s personal bond caseload includes 6% of all defendants booked (Figure 4). Court date reminders are issued through an automated call system and defendants are expected to keep the office informed in the event of travel, an address change, or a new offense. Misdemeanor defendants, who comprise about 80% of the personal bond caseload, check in by mail. Those with felony charges appear at the program office in person, and anyone facing drug charges is required to submit to scheduled monthly substance abuse testing. An additional 11% of people on personal bond are monitored with vehicle interlock devices; less than 1% take part in random drug tests or GPS monitoring.

## Surety Bond Supervision

By far the largest proportion of defendants in Tarrant County, 60%, are released on cash or surety bond with no oversight by the county. An additional 3% of defendants are assigned to a surety bond supervision caseload operated outside of the Pretrial Services Office by the Tarrant County Community Supervision and Corrections Department.



Defendants supervised on surety bond receive court date notifications. Additional requirements that vary by individual can include vehicle interlock or GPS device monitoring, random drug tests, and field visits. Surety bond supervision largely targets people who can post bail, but who are identified either by judges or by statute as being potentially untrustworthy in the community. As in Travis County, Tarrant County assumes the burden of oversight to ensure court appearance and safety for these high-risk individuals on commercial bonds.

## Summary

Together, Travis and Tarrant counties offer prototypes of risk-informed and money-based pretrial systems. In Tarrant County judges chiefly set bail based on current charges and criminal history, then rely upon the threat of financial loss to incentivize pretrial compliance for those who post bond. In Travis County, judges review individualized assessment scores predicting each person's chance of bail failure then make risk-informed judgments about which defendants can be confidently released on personal bond. These divergent approaches provide a rich context in which to explore relative approaches, impacts, costs, and fairness.

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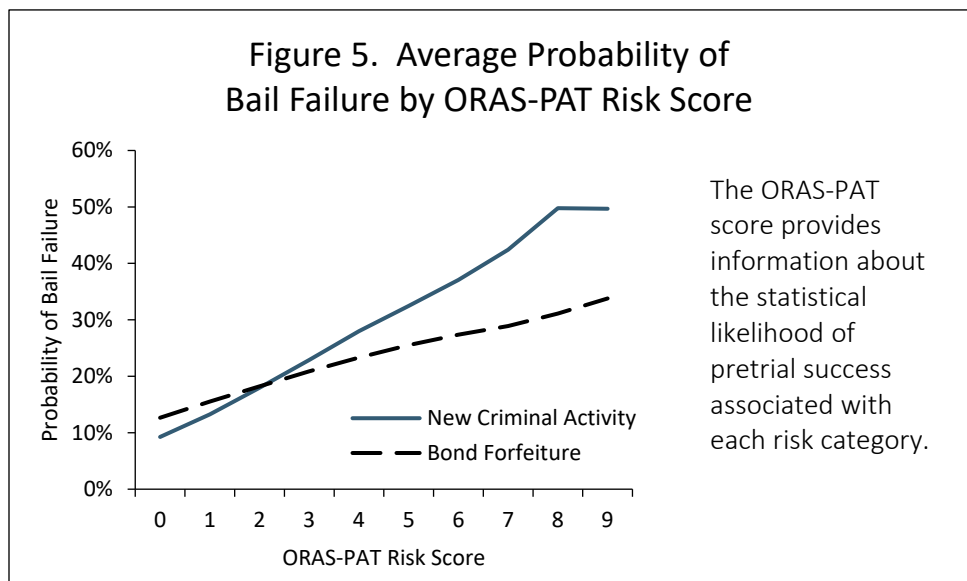
# FINDING 1: Validated pretrial risk assessment successfully predicts defendants' chance of bond failure.

To be effective, a validated pretrial assessment instrument must be able to reliably predict a defendants' risk of bond failure if released while awaiting trial. Equally important, judges must consistently refer to assessment results when making the decision to release or detain. A failure of either assessment or implementation would undermine the objective of risk-informed release.

## Risk Scores Predict Bail Failure

This study finds that the ORAS-PAT risk assessment adopted in Travis County reliably predicts pretrial behavior.<sup>14</sup> Among people released,<sup>15</sup> Figure 5 shows a linear relationship between defendants' risk score and both the chance of a missed court appearance and the chance of new criminal activity.<sup>16</sup> The higher the score, the greater the likelihood of bail failure by both measures.

As seen in Figure 5, the tool is somewhat more effective for predicting new criminal activity than bond forfeiture. The flatter line indicates a weaker association between the ORAS-PAT score and court appearance. On the other hand, the same score increments measure greater increases in the chance of new criminal activity. Therefore, while prediction of new offending is strong, the assessment tool is somewhat less powerful for predicting which defendants are likely to be absent in court.



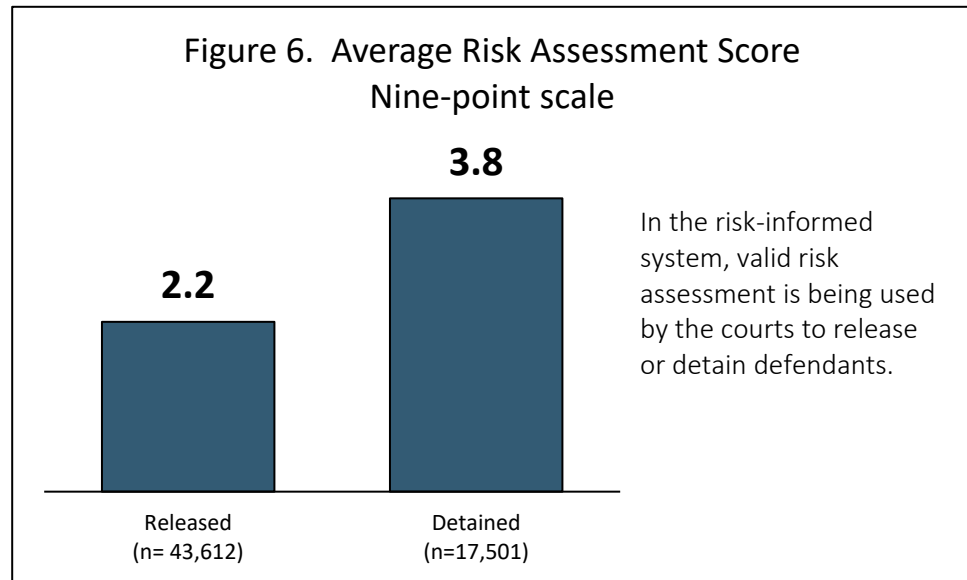
<sup>14</sup> Latessa, Edward, Paula Smith, Richard Lemke, Matthew Makarios, and Christopher Lowenkamp. "Creation and Validation of the Ohio Risk Assessment System: Final Report." *Center for Criminal Justice Research, School of Criminal Justice, University of Cincinnati, Cincinnati, OH* (2009). Retrieved from [http://www.ojcs.ohio.gov/ORAS\\_FinalReport.pdf](http://www.ojcs.ohio.gov/ORAS_FinalReport.pdf); Cohen, T. H., Reaves, B. A. "Pretrial Release of Felony Defendants in State Courts," Bureau of Justice Statistics, 2007. Lowenkamp, C. T., Richard Lemke, and Edward Latessa. "The Development and Validation of a Pretrial Screening Tool." *Federal Probation*, 72, (2008): 2-9

<sup>15</sup> Pretrial detainees were excluded from this analysis because they were unable to meet the criterion of a missed court appearance or of new criminal activity in the community. Results may have differed if it had been possible to test the instrument on this population.

<sup>16</sup> See Technical Appendix.

## Risk Scores Are Being Used to Inform Detention Decisions

While it is essential that the ORAS-PAT accurately anticipate pretrial success, consistent implementation is also important. It is known that Travis County pretrial officers have discretion to weigh interview findings, offense attributes, therapeutic needs, or other considerations in their final recommendation.



Although deviations may be appropriate, in a risk-informed release system, the instrument's score must be the primary driver for release on personal bond.

Analyses were conducted to assess the association between the ORAS-PAT risk score and the court's decision to release or detain. Figure 6 demonstrates that people held until trial have a higher risk score on average (3.8) than those who are released (2.2). More sophisticated multivariate models were also used to isolate the effect of the risk score by controlling statistically for other defendant and case characteristics that might impact the actions of the court. After accounting for the number and severity of charges, criminal history, probation status, and demographics, the ORAS-PAT score successfully predicts the detention decision 80% of the time.<sup>17</sup> Though Travis County pretrial officers may consider other factors, then, the data affirms the risk assessment is a dominant influence in their recommendation and in the action taken by the courts.

### Summary

As it is currently implemented in Travis County, the ORAS-PAT meets two essential criteria for validated pretrial risk assessment. First, defendants' individual scores are a valid indicator of the chance they will succeed if they are released on personal bond. The instrument predicts new criminal activity with somewhat greater accuracy than bond forfeitures, but on the whole the tool is a useful and effective resource for the courts.

Second, and equally important, the data shows pretrial officers and the courts meaningfully consult risk assessment results when making the decision to release or detain. The linkage between reliable assessment and consistent decision-making is key to valid risk-informed defendant classification.

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<sup>17</sup> See Technical Appendix.

## FINDING 2: Similar decisions to release or detain defendants can be obtained using a lower-cost statistical algorithm instead of an interview-based risk assessment.

The data affirms Travis County's pretrial risk assessment system is a valid and effective decision tool for the judiciary. A potential drawback, however, is that the ORAS-PAT requires costly and time-consuming interviews with defendants and others. Components of the risk determination such as employment status, residential stability, and recent drug use cannot be ascertained any other way. As policymakers contemplate expanding risk-informed pretrial release to jurisdictions statewide, it is worth considering whether more cost-effective alternatives might achieve similar results.

### Efficacy of an Automated Risk Assessment Algorithm

A program of research supported by the Laura and John Arnold Foundation has produced an automated risk assessment model that does not require the collection of personal information.<sup>18</sup> The Public Safety Assessment-Court (PSA-Court) uses nine data elements available in most county criminal record systems to predict the likelihood that an individual will commit a new crime or fail to appear in court if released before trial.<sup>19</sup> The predictive formula of the PSA-Court was not used in this study. However, its existence raises compelling questions about whether a risk determination based entirely upon data elements currently available in the Travis County information system might match the effectiveness of the ORAS-PAT as a guide for judicial decision-making.

To answer this question, a multivariate model was constructed predicting the courts' decision to release or detain individual defendants. Since the ORAS-PAT has been shown to be a valid predictor of bail failure both here and in the research literature,<sup>20</sup> it would be useful and efficient if the same classification decision could be reached by an automated algorithm. The variables used in the model were those commonly found to correlate with failures to appear or new arrests.<sup>21</sup>

Results find the statistical model's recommendation to release or detain is more closely aligned with judges' actual decision than the interview-based assessment consulted when the determination was made. While the ORAS-PAT risk score correctly anticipated the court's decision in 80% of cases, the statistical algorithm predicted the same detention decision 84% of the time. Stated differently, *Travis County judges would have made nearly identical decisions about which individuals to incarcerate or release using either the statistical model or by conducting interviews.* Moreover, the better performance of the statistical model implies that it does a better job than the interview accounting for other case-related factors that might motivate judges to diverge from the ORAS-PAT recommendation (e.g., violence, pending cases, or probation status).

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<sup>18</sup> Laura and John Arnold Foundation. (2013). *Developing a National Model For Pretrial Risk Assessment*; VanNostrand, M., and Christopher Lowenkamp (2013). *Assessing Pretrial Risk without a Defendant Interview*, Laura and John Arnold Foundation.

<sup>19</sup> The Public Safety Assessment-Court pretrial risk assessment considers age at current arrest, current violent offense, pending charge at the time of the offense, prior misdemeanor conviction, prior felony conviction, prior violent conviction, prior failure to appear in the past two years, prior failure to appear older than two years, and prior sentence to incarceration. See Laura and John Arnold Foundation (2013). *Public Safety Assessment: Risk Factors and Formula*.

<sup>20</sup> *Supra* Finding 1 and note 18.

<sup>21</sup> See Technical Appendix.

From a broader policy perspective, this finding increases confidence that an automated risk evaluation could achieve results similar to more resource-intensive interview-based evaluations at a lower cost. For jurisdictions that lack the time and other resources to develop and validate their own risk assessment tool, the PSA-Court may be a good option.<sup>22</sup> Introduction of any such tool statewide should be accompanied by supports to ensure local criminal justice systems have the necessary data elements and the protocol is properly implemented. If these challenges can be adequately addressed, risk-informed pretrial release could be a feasible and effective option for every Texas jurisdiction.

## Summary

Validated pretrial risk protocols in current use generally incorporate information gathered through interviews with defendants. However, increases in staff required to speak with every booked defendant could prevent many jurisdictions from adopting risk-informed pretrial practice.

This study finds that a statistical algorithm using data that is commonly available in local criminal justice record systems is equally effective for providing judges the information needed to make good pretrial release decisions. An automated risk determination using criminal administrative data would have produced similar results at a lower cost than an interview-based tool.

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<sup>22</sup> *Supra* note 18. The Arnold Foundation's PSA-Court has been externally validated in a study of about 750,000 pretrial cases in 300 different jurisdictions nationally.



### **FINDING 3: Validated risk assessment results in better pretrial classification: fewer high-risk defendants are released, and fewer low-risk individuals are detained.**

The Texas Constitution provides a right to reasonable bail. Individuals with financial means can pay a cash or surety bond while those without resources often remain in detention. It is not clear, however, that such a system helps the courts meet the dual objectives of court appearance and public safety, or whether risk-informed personal bond might be a more effective means to achieve these purposes.

To answer this question, a statistical model was constructed to measure each individual's chance of bail failure using data from disposed cases in Tarrant and Travis counties. The resulting probabilities were used to ascertain the *ideal* custody decision: The upper 30% of individuals at highest risk of new criminal activity<sup>23</sup> were said to be appropriate for detention while the remaining 70% were designated as suitable for release.<sup>24</sup> The risk-informed and surety bond systems were then compared based on their ability to match this model in practice, liberating low-risk defendants and holding those who might cause harm in the community.

#### **Release Based on Risk**

Results presented in Table 3 first show that where personal bond was determined by validated risk scores, a larger number of people got out of jail pretrial (71% vs. 68% in the monetary system). Even more importantly, in addition to releasing more people, the risk-informed decisions more often resulted in the appropriate detention of objectively dangerous individuals and in the release of those who pose no threat.

In the risk-informed system, 59% of booked defendants were both identified by the model as safe for release, and were, in fact, released. Fewer of the defendants released in the financial pretrial system (55%) were designated as safe by the model. Similarly, 18% of defendants in the risk-informed county were detained in accordance with the statistical recommendation, compared to 17% in the financial release county. Overall, the release decision aligned with defendants' objective chance of success in 5% more cases where bond was determined by a risk assessment (77%) rather than by access to cash or surety bond (72%).

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<sup>23</sup> Most defendants in both Travis (81%) and Tarrant Counties (86%) would have had the same model-based recommendation to release or detain if the dependent variable was bond forfeiture or new criminal activity.

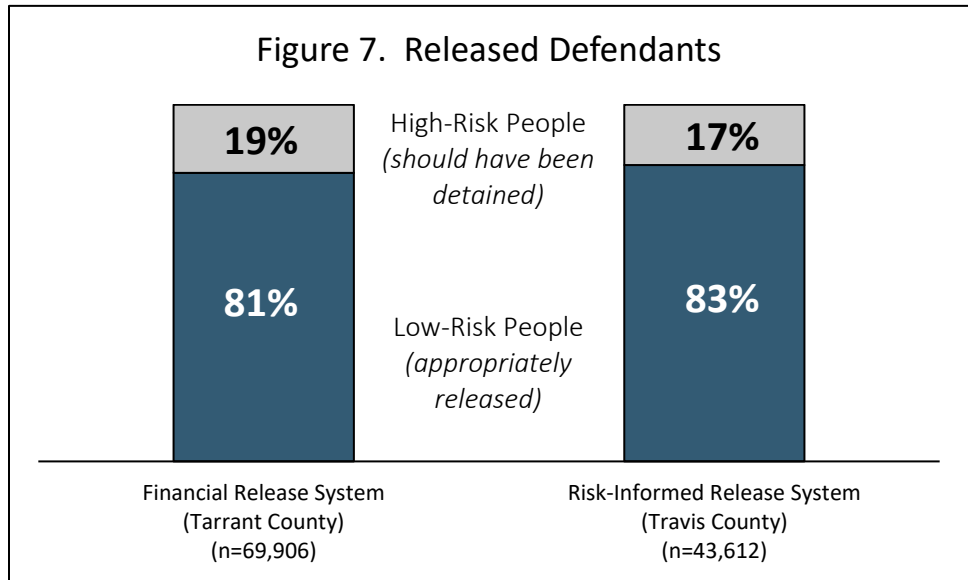
<sup>24</sup> The proportion of people detained in Travis (29%) and Tarrant Counties (32%) is aligned with this estimation. A review of the literature finds a number of other jurisdictions that incarcerate roughly 30% of people booked. See Pretrial Justice Institute & JFA Institute. (2012, October 19). "The Colorado Pretrial Assessment Tool (CPAT)." Retrieved from <https://www.pretrial.org/download/risk-assessment/CO%20Pretrial%20Assessment%20Tool%20Report%20Rev%20-%20PJI%202012.pdf>; JFA Institute (2010, October 29). "Kentucky Pretrial Risk Assessment Instrument Validation." Retrieved from <http://www.pretrial.org/download/risk-assessment/2010%20KY%20Risk%20Assessment%20Study%20JFA.pdf>; Luminosity, Inc. (2009, May 1). "The Virginia Pretrial Risk Assessment Instrument." Retrieved from <http://www.pretrial.org/download/risk-assessment/VA%20Risk%20Report%202009.pdf>; The state of Kentucky, which maintains a high-functioning statewide risk-informed personal bond system detains approximately 25% of defendants to disposition.

Table 3. Classification Success Rate

	Model Recommendation		
	Safe for Release	Should Be Detained	
<b>Financial Release System (Tarrant County)</b>			
Actually Released	<b>55%</b> <i>Correctly Classified Release</i> (n=56,552)	13% (n=13,354)	68% Pretrial Release Rate
Actually Detained	15% (n=14,984)	<b>17%</b> <i>Correctly Classified Detain</i> (n=17,303)	
<b>Risk-Informed Release System (Travis County)</b>			
Actually Released	<b>59%</b> <i>Correctly Classified Release</i> (n=36,236)	12% (n=7,376)	71% Pretrial Release Rate
Actually Detained	11% (n=6,544)	<b>18%</b> <i>Correctly Classified Detain</i> (n=10,957)	

Release of High-Risk Defendants

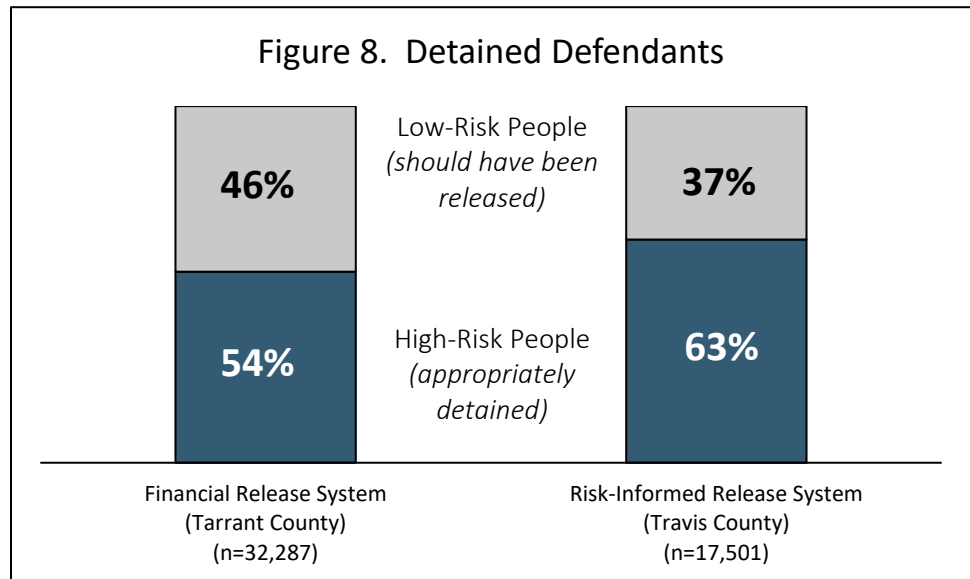
Focusing more narrowly on people released prior to adjudication, Figure 7 shows the financial release system lets more potentially dangerous individuals out of jail and into the community. Of those freed, 19% had a statistical risk profile indicating they might threaten public safety. Just 17% of people in the personal bond system were equally high risk.



While this difference may seem modest, negative consequences result from the misclassification and release of dangerous defendants. As shown in findings that follow, their greater involvement in new crimes while on bond drives up costs and presents serious concerns for public safety.

## Detention of Low-Risk Defendants

Figure 8 shows even greater differences in classification error among people detained. While 37% of people jailed in risk-informed Travis County could have been safely released, in Tarrant County's money-based system the number rises to 46%. Detention of low-risk individuals because of their inability to pay puts them at a disadvantage relative to their more affluent peers,<sup>25</sup> and drives up jail costs with no return in improved court appearance or public safety.



## Summary

The power of risk assessment lies in its ability to decide pretrial release by the objective likelihood of bail failure rather than by wealth. This study finds risk scores help judges detain more high-risk people – an outcome shown in Finding 4 to be associated with real reductions in criminal activity. Conversely, risk assessment reduces “poverty holds” that elevate the chance of conviction and lengthen sentences among those without money to get out of jail.<sup>26</sup> Valid tools give judges accurate information about defendants’ likely behavior on bond, helping them make decisions that increase fairness, and as Finding 4 shows, improve public safety while reducing costs.

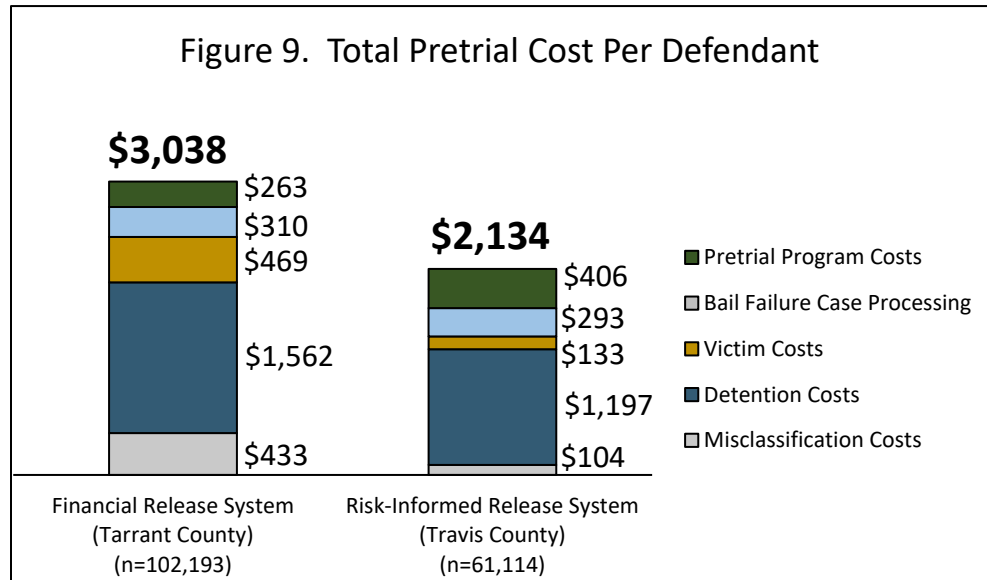
<sup>25</sup> See generally, Finding 5.

<sup>26</sup> *Supra* notes 1-5.

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**FINDING 4: The costs of a risk-informed pretrial release system are more than offset by savings that occur when defendants are properly classified.**

Administering a system of risk-informed release is costly. With financial release, courts make a subjective estimation of defendants’ chance of bond failure and set a bail amount. Thereafter, the mere threat of monetary loss is expected to incentivize court appearance and safety for most defendants.



In contrast, the risk-informed release system

requires a staff of professionals to assess each defendants’ objective likelihood of success on bond. Pretrial officers also provide risk-appropriate monitoring of moderate risk defendants to ensure they meet requirements of the court until trial. Considering the expense of creating this specialized capacity, financial release may seem more cost-effective. However, Figure 9 presents evidence to the contrary.

Pretrial program costs are substantially higher in the risk-informed system (\$406 per defendant) than in the financial release system (\$263). Program costs include risk assessment, personal bond and surety bond supervision, counseling and evaluation services (in Travis County’s personal bond system only), 10% of bail in the case of surety bonds, and any costs for devices or testing required by the courts (See Table 4).

However, the improved decisions about whether to release or detain defendants made possible by risk assessment produce significant returns, reducing overall costs by nearly one-third. The savings come primarily from reductions in bond failure: case processing for bond forfeitures or new charges, victim costs, and detention. Additional costs due to misclassification<sup>27</sup> are also just one-fourth as high where risk assessment is used. The remainder of Finding 4 considers each of these cost elements in greater detail.<sup>28</sup>

<sup>27</sup> Misclassification costs are a statistically determined increment above or below actual costs reflecting potential savings missed by jailing people who should have been released or releasing people who should have been detained. See Finding 4.5.

<sup>28</sup> Additional county cost data is provided in Tables 1 and 2. The methodology and sources for cost estimation is provided in the Technical Appendix.

Table 4. Summary of Program Services

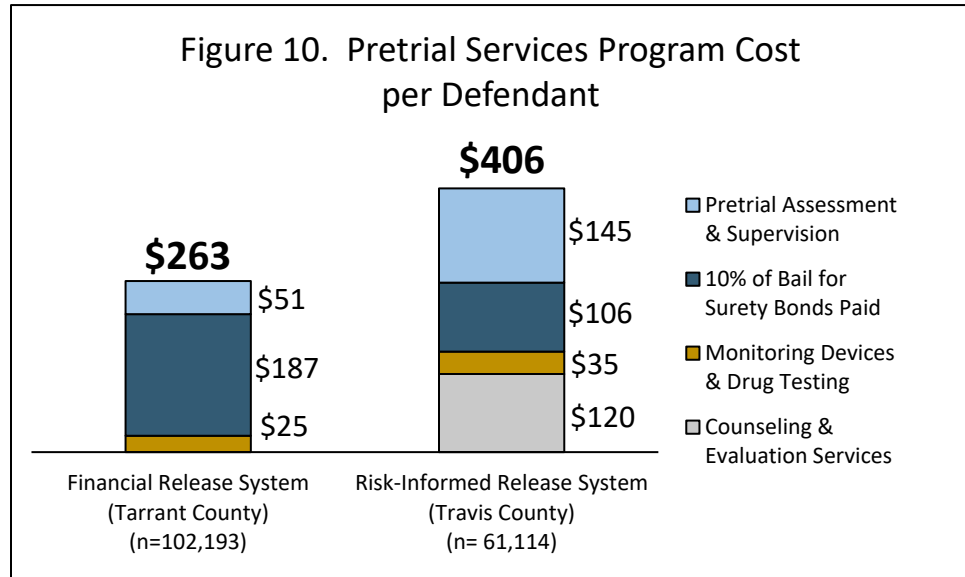
	Financial Release System (Tarrant County)	Risk-Informed Release System (Travis County)
<b>Pretrial Assessment</b>	<p>Charge-based personal bond screening for defendants who have not posted financial bond</p> <ul style="list-style-type: none"> <li>• <u>Impact</u>: &lt; 6% of defendants</li> <li>• <u>Fund Source</u>: 90% county, 10% defendant</li> </ul>	<p>ORAS-PAT validated assessment of all booked defendants</p> <ul style="list-style-type: none"> <li>• <u>Impact</u>: 81% of defendants (<i>excluding people with holds and bond forfeitures</i>)</li> <li>• <u>Fund Source</u>: 100% county</li> </ul>
<b>Personal Bond Supervision</b>	<p>Reminders and check-ins for all defendants on personal bond</p> <ul style="list-style-type: none"> <li>• <u>Impact</u>: 6% of defendants</li> <li>• <u>Fund Source</u>: 90% county, 10% defendant</li> </ul>	<p>Reminders and check-ins for defendants on personal bond</p> <ul style="list-style-type: none"> <li>• <u>Impact</u>: 8% of defendants (<i>41% of defendants have personal bond with no monitoring requirements</i>)</li> <li>• <u>Fund Source</u>: 90% county, 10% defendant</li> </ul>
<b>Surety Bond Supervision</b>	<p>Surety bond supervision for high-risk defendants with statutory requirements or at the request of courts</p> <ul style="list-style-type: none"> <li>• <u>Impact</u>: 3% of defendants</li> <li>• <u>Fund Source</u>: 55% county, 45% defendant</li> </ul>	<p>Surety bond supervision for high-risk defendants with statutory requirements or at the request of courts</p> <ul style="list-style-type: none"> <li>• <u>Impact</u>: 3% of defendants</li> <li>• <u>Fund Source</u>: 100% county</li> </ul>
<b>Counseling and Evaluation Services</b>	<p>Not Applicable</p>	<p>Therapeutic counseling for defendants with risks impacting success on personal bond (e.g., substance use, anger management, mental health)</p> <ul style="list-style-type: none"> <li>• <u>Impact</u>: 25% of defendants</li> <li>• <u>Fund Source</u>: 100% defendant</li> </ul>
<b>Surety Bond</b>	<p>Ten percent of bail amount paid to commercial bond companies to post a surety bond.</p> <ul style="list-style-type: none"> <li>• <u>Impact</u>: 62% of defendants</li> <li>• <u>Fund Source</u>: 100% defendant</li> </ul>	<p>Ten percent of bail amount paid to commercial bond companies to post a surety bond.</p> <ul style="list-style-type: none"> <li>• <u>Impact</u>: 11% of defendants</li> <li>• <u>Fund Source</u>: 100% defendant</li> </ul>
<b>Monitoring Devices and Drug Testing</b>	<p>Vehicle interlock, GPS location monitoring, Random and scheduled drug testing</p> <ul style="list-style-type: none"> <li>• <u>Impact</u>: Estimated 3% of defendants<sup>^</sup></li> <li>• <u>Fund Source</u>: 100% defendant</li> </ul>	<p>Vehicle interlock, Electronic and GPS location monitoring, Random drug testing, continuous alcohol monitoring</p> <ul style="list-style-type: none"> <li>• <u>Impact</u>: 7% of defendants</li> <li>• <u>Fund Source</u>: 100% defendant*</li> </ul>

\* Travis County pays GPS and continuous alcohol monitoring for indigent defendants who apply, and electronic monitoring for people on personal bond.

<sup>^</sup> People monitored with devices or testing were not individually identified in the Tarrant County data. Estimates for aggregate participation were provided by program staff.

## 4.1: Pretrial Program Costs

Travis County’s risk-based approach to pretrial decision-making comes at a cost of \$406 per defendant, an amount over 1.5 times greater than in Tarrant County’s financial release system (\$263; Figure 10). The specific components underlying the differential are detailed in Figure 9. The values shown reflect the total expenses of risk assessment and monitoring without



consideration of whether they are paid by the county or by defendants. In general, however, about one-fifth of all pretrial program costs are paid by the jurisdiction in Tarrant County and about one-third are paid by Travis County. The remainder are paid by defendants.

**Pretrial Assessment and Supervision Cost:** Pretrial assessment and supervision (described in Table 4) is the single largest program expense in the risk-informed release system (\$145 versus \$51 in the financial release system). For an investment of \$94 more per person on average, risk of bail failure is determined for virtually every defendant (81% excepting those with holds or a bond forfeiture), and a majority are released on personal bond with either no conditions (41%) or with risk-appropriate monitoring (18%). In contrast, Tarrant County costs are lower but risk is not assessed and fewer than 6% of defendants benefit from the personal bond program. In both jurisdictions, the county covers about 90% of assessment and supervision costs.

**Cost of Bail for Surety Bonds Paid:** In the financial bail system, nearly two-thirds of individuals arrested (62%) pay an average bail of \$3,981 to get out of jail. For people without cash on hand, a commercial bond typically charges 10% to post the bail amount, and the average cost for surety bonds paid is \$187 per booked defendant. In the risk-informed system, the average bail is substantially higher (\$6,130 on average), but with just 11% of individuals paying for release, the overall cost is lower -- just \$106 per booked defendant.

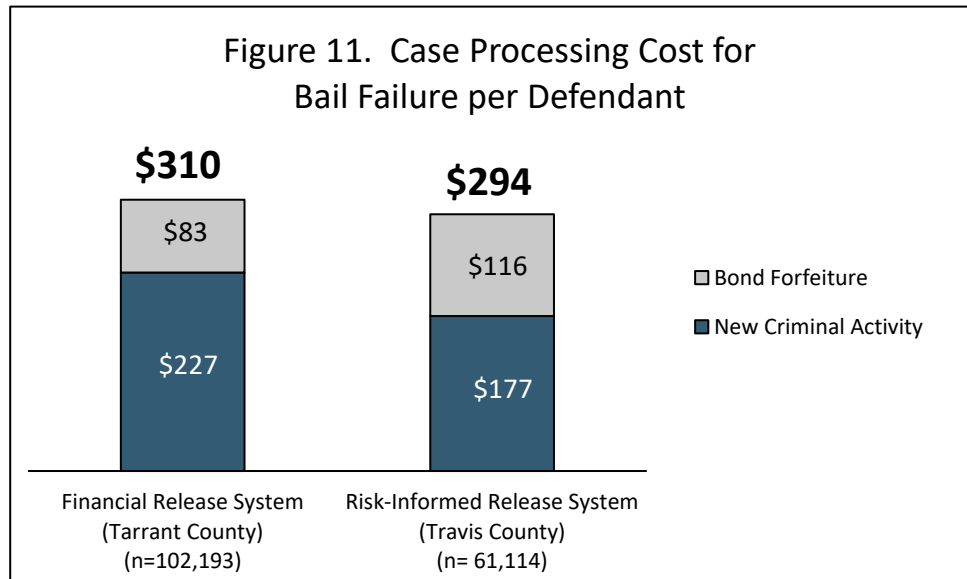
Moreover, when money is required for release, people on the economic margin may be unable to hire an attorney; costs of counsel are then shifted from defendants to counties. The data show court appointment rates are indeed higher in Tarrant County where people pay for pretrial release (57%) than in Travis County where personal bond is more common (52%). While many factors can contribute to this finding, money bail may be one explanation.

**Cost of Monitoring Devices and Testing:** Defendants pay most of the costs for devices or testing required as a condition of bond.<sup>29</sup> They can include GPS or electronic location monitoring, drug testing, or vehicle interlocks that analyze drivers for alcohol use (see Table 4). The financial release system extends these types of requirements to a much smaller proportion of people – about 2% of all defendants compared to as many as 7% of people where risk is the determinant. In addition, drug testing in particular is twice as costly in Travis County (\$25/test) as in Tarrant (\$12/test). For these reasons, average costs are higher in Travis County (\$35 per defendant) than in Tarrant County (\$25 per defendant).

**Cost of Counseling and Evaluation Services:** Where risk is assessed, concerns may be identified that impact individuals’ ability to succeed on pretrial release (e.g., mental health, substance abuse, or anger management), in Travis County, a comprehensive diagnostic evaluation is ordered from the county’s Counseling and Evaluation Services (CES) Department. People with indicated needs are directed to therapeutic services as a condition of personal or, less frequently, surety bond.<sup>30</sup> Initial assessment (\$55) and treatment costs, if needed, are paid by the defendant.<sup>31</sup> The cost, averaged across all booked defendants, is \$120 per person.

#### 4.2: Bail Failure Case Processing Costs

After accounting for assessment and supervision, most remaining pretrial costs are due to bail failures. When a defendant on bond absconds or re-offends, costs accrue to the county for case processing related to the new violation.<sup>32</sup> Total costs for bail failures – either forfeitures or new crimes – are higher in Tarrant County (\$310 compared to \$294 in Travis County, Figure 11).



However, a closer look at the data reveals countervailing trends: Bond forfeitures are a greater expense in the risk-informed release system (Table 5), while the financial bond system bears more cost for processing new criminal cases (Table 6).

<sup>29</sup> Travis County covers the \$3.70 daily cost for the roughly 1.2% of defendants on personal bond who have electronic monitoring as a requirement. In addition, the county pays GPS and continuous alcohol monitoring for a small proportion of indigent defendants who apply and are approved for assistance with those expenses.

<sup>30</sup> Eleven percent of people referred to Counseling and Evaluation Services are sent as a condition of surety bond.

<sup>31</sup> See Technical Appendix.

<sup>32</sup> A bail forfeiture is estimated to cost \$1,004 for a minor court hearing. New criminal activity costs \$3,754 per felony or \$2,294 per misdemeanor for re-arrest, court hearings, prosecution, and representation for indigent defendants. Additional information about sources and methods is available in the Technical Appendix.



Table 5. Bail Forfeiture among Defendants on Bond

	Financial Release System (Tarrant County) (n=69,906)	Risk-Informed Release System (Travis County) (n=43,612)
<b>BAIL FORFEITURE</b>	<b>11.6%</b>	<b>17.5%</b>
Low-Risk Defendants	9.0%	13.2%
High-Risk Defendants	2.6%	4.3%

**Bond Forfeiture:** In Travis County’s risk-informed release system, costs are driven up by a bond forfeiture rate (17.5%) that is 6 percentage points higher than Tarrant County’s financial release system (11.6%). With financial interests at stake, it appears commercial bond companies do a better job ensuring clients are present in court. Conversely, the risk-informed system releases ten times more people, most of whom are unmonitored while awaiting trial. The volume of people freed in Travis County’s risk-informed system, combined with their relative independence, may increase opportunity for missed court appearances.

Table 6. New Criminal Activity among Defendants on Bond

	Financial Release System (Tarrant County) (n=69,906)	Risk-Informed Release System (Travis County) (n=44,169)
<b>NEW CRIMINAL ACTIVITY</b>	<b>13.5%</b>	<b>11.1%</b>
Non-Violent Criminal Activity	10.8%	8.7%
Violent Criminal Activity	2.7%	2.4%

**New Criminal Activity:** When examining bond failure due to new offending, opposite results were found; financial bond is less effective at preventing involvement in criminal activity. The rate of new offending stands at 13.5% in the financial release system, a rate 20% higher than in the risk-informed system (11.1%). Violent offending is also 12% more prevalent where people are released based on ability to pay – 2.7% in Tarrant County compared to 2.4% in Travis County. Of all offenses committed by people on bond, 50% more are violent felonies where release is determined by financial ability (7.5% versus 4.9% in the risk-informed jurisdiction). These and other data presented in Table 7 demonstrate the outsized impact of releasing even a few more dangerous people.

### 4.3: Victim Costs

Without risk assessment, more high-risk individuals are able to secure pretrial release.<sup>33</sup> As a consequence, more crimes are committed by people on financial bond, and the crimes committed are more likely to be violent felonies.<sup>34</sup> In Tarrant County’s financial release system almost half of charges attributed to people on bond are felonies (46%), compared to about one-third of charges in Travis County (31%, Table 7). Moreover, the crimes

<sup>33</sup> *Supra* Table 3, Figure 7

<sup>34</sup> *Supra* Finding 4.2.

committed are more serious: 1.5 times more felonies are violent in the financial release system (7.5%) than where risk assessment decides liberty (4.9%).

Correspondingly, victim costs are 3.5 times higher in the financial release system (\$469 per defendant) versus \$133 where release is risk-informed. In Travis County, victim costs for new law-breaking average \$1,900 per offense, whereas in Tarrant County’s money based system, the amount is 4.7 times greater: \$9,052. Overall, the evidence is clear. Where judges are without an objective means to evaluate defendant risk, a small number of very dangerous individuals released on cash or surety bond can bring serious and costly harm to the community.

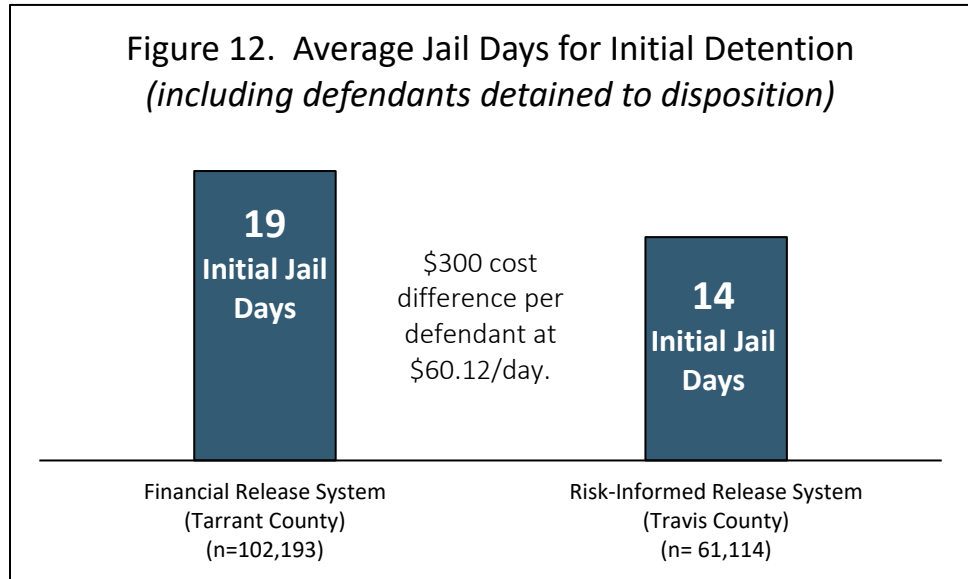
Table 7. New Criminal Activity Committed by People on Bond

	Financial Release System (Tarrant County) (n=8,958)	Risk-Informed Release System (Travis County) (n=4,692)
<b>Victim Costs per Defendant</b>	<b>\$469</b>	<b>\$133</b>
<b>Victim Costs per Offense</b>	<b>\$9,052</b>	<b>\$1,900</b>
<b>VIOLENT FELONIES</b>	<b>7.5%</b>	<b>4.9%</b>
Homicide	0.2%	0.0%
Attempted Homicide	0.0%	0.0%
Sexual Assault	0.4%	0.3%
Robbery	2.1%	0.8%
Assaultive	4.6%	3.6%
Other Violent	0.2%	0.2%
<b>NON-VIOLENT FELONIES</b>	<b>38.1%</b>	<b>26.6%</b>
Burglary	4.5%	2.6%
Theft	8.2%	3.8%
Other Property	3.3%	1.5%
Drug Offenses	16.5%	13.5%
Weapons Offenses	1.6%	0.7%
Other Felony	4.0%	4.5%
<b>MISDEMEANORS</b>	<b>54.5%</b>	<b>68.4%</b>
Weapons Offenses	4.9%	0.1%
Assaultive	5.0%	6.1%
Theft	11.9%	6.3%
Other Property	2.6%	2.3%
Drug Offenses	10.8%	14.7%
Other Misdemeanors	19.3%	38.9%
<b>TOTAL</b>	<b>100%</b>	<b>100%</b>

#### 4.4: Detention Costs

This study finds detention is the single largest pretrial expenditure, comprising about half of total costs in both financial release and risk-informed systems.<sup>35</sup> Because jail costs are a significant component of county budgets, jurisdictions are often eager to adopt practices that reduce incarceration without compromising public safety. Risk-informed

pretrial release meets these objectives in two ways: 1) defendants spend fewer days in jail following initial arrest; and 2) fewer defendants are re-incarcerated after committing new crimes.



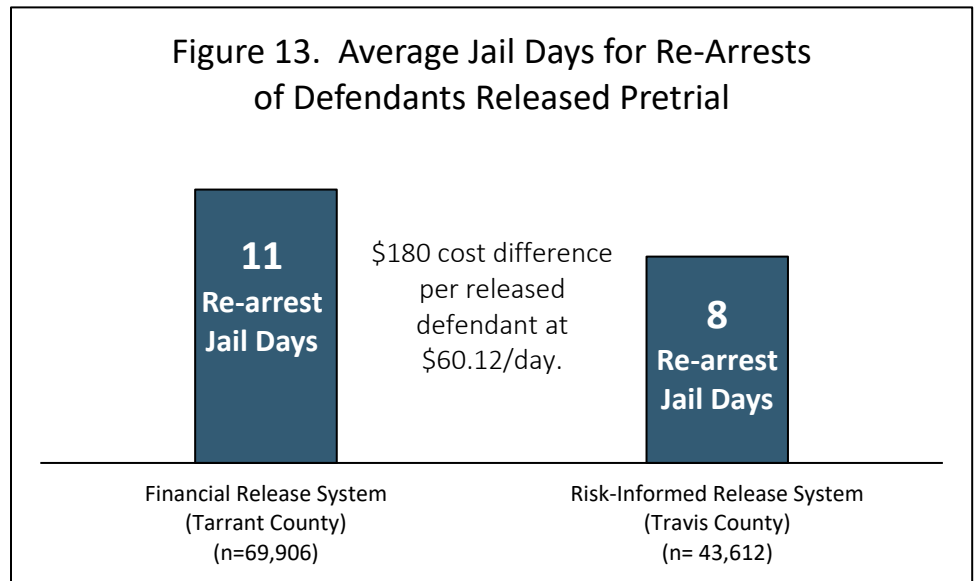
**Initial Detention:** The proportion of defendants released from detention within one day of arrest is somewhat higher in the financial release system (57% versus 55% in the personal bond system) as individuals with ready access to cash are able to quickly post bail and leave. By the third day after arrest, however, after allowing time to complete the risk determination, more people have been released in the personal bond system (63% versus 61% in the financial bond system).

Most striking, though, are the differences in average length of detention among individuals who are still incarcerated on the fourth day after arrest: 47 days on average where money is required for release, compared to 37 days where release is determined by risk. While many factors can extend pretrial detention, it seems likely that at least part of the 10-day differential is explained poor defendants' inability to pay the price of bail.<sup>36</sup> The delay costs the county an additional \$300 on average for each defendant released in the financial release system.

<sup>35</sup> Average cost per day for Texas jails – August 2015-July 2016. Information provided by the Texas Commission on Jail Standards on August 17, 2016.

<sup>36</sup> Average cost of surety bonds paid are \$3,981 in Tarrant County and \$6,130 in Travis County. See also, Finding 5 and Figure 16, showing low risk defendants detained on bail less than \$2,000.

**Re-Arrest:** Differences in the prevalence and the severity of new criminal activity among people on bond<sup>37</sup> contributes to more jail days and higher costs in the financial release system. While people on bond who are re-arrested in Travis County are detained for 8 days on average, more serious offenders<sup>38</sup> in Tarrant County are held for 11 days. The three-day difference costs an additional \$180 on average for new detention of each individual re-arrested.



#### 4.5: Misclassification Costs

Misclassifications, defined as decisions to release or detain that are inconsistent with defendants’ actual risk, generate costs. To measure resources associated with misclassification, statistical models were constructed to make the following determinations.

Considering each person’s statistical characteristics:

- Is their chance of committing a new offense great enough that they “should” be held in detention, or does the data suggest they can be safely released?<sup>39</sup>
  - What was the “actual” release decision?
- What are the expected total pretrial costs for a person with statistically similar attributes?<sup>40</sup>
  - What was the “actual” cost for each defendant?

Two measures were then extracted from these data:

- 1) Actual cost of high-risk defendants who were released, net of what it would have cost to detain a statistically similar person of the same risk; and
- 2) Actual cost of low-risk defendants who were detained, net of what it would have cost to release a statistically similar person of the same risk.

<sup>37</sup> *Supra* Finding 4.2.

<sup>38</sup> *Supra* Finding 4.2 and 4.3.

<sup>39</sup> See Technical Appendix.

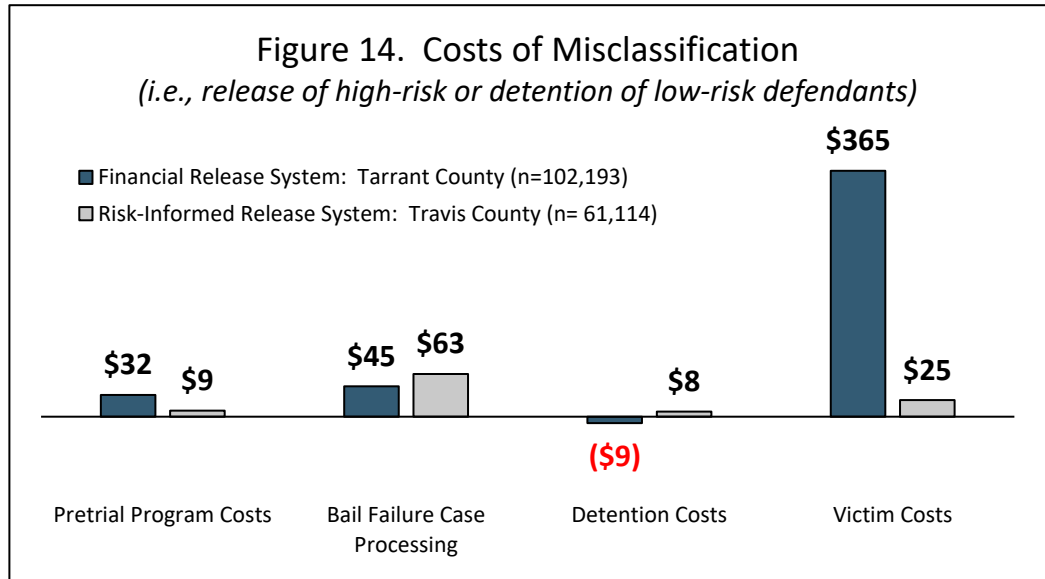
<sup>40</sup> See Technical Appendix.

Together, these measures make it possible to account for pretrial costs in each jurisdiction resulting from failures to treat pretrial defendants according to their true risk.

As expected, the system using validated risk assessment to make classification decisions had lower misclassification costs on average (\$104 per defendant). Where release is determined by financial means, net costs were more than four times higher (\$433 per defendant, See Figure 9).

Figure 14 illustrates where the costs of misclassification are concentrated. In each jurisdiction, the release of high-risk defendants generated net costs for pretrial services, bail forfeitures, and victim costs above those expected if they had been properly detained.

Travis County’s risk-informed system also produced a net misclassification cost resulting from failure to jail some high-risk defendants who were later re-arrested. In Tarrant County, on the other hand, the release of people who should have been detained produced net savings from jail costs avoided.



Overall, 14% of total pretrial costs are attributable to misclassification in Tarrant County’s financial release system. In risk-informed Travis County a much lower proportion – just 5% of pretrial expenditures – are due to placement decisions that are inconsistent with defendants’ risk.

### Summary

A pretrial program incorporating risk assessment and personal bond supervision costs roughly 1.5 times more to operate than a system in which defendants gain release by posting financial bail. However, this study finds investment in protocols for risk-informed detention and monitoring yields a substantial return in every other expense category. Risk-informed pretrial release is associated lower rates of bond failure, less new criminal activity and less violent crime committed while on bond, and fewer pretrial jail days both due to initial detention and resulting from re-arrest on new offenses. The incremental costs resulting from wrong decisions to release or detain defendants are also lower where risk-assessment is used. Changing financial release practices that are widespread in Texas and nationally will require re-thinking current practices, but the evidence suggests benefits to defendants, jurisdictions, and the community make the effort worthwhile.

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## FINDING 5: A risk-informed pretrial release system is fairer for defendants.

### Disparate Impacts

Because personal bond effectively removes money as an impediment to release, the risk-informed pretrial system leaves fewer individuals jailed because of their poverty. Indeed, in the risk-informed system, 60% of people qualify for non-financial personal bonds compared to just 6% in the money-based system (Figure 15). While the financial system releases about the same number of defendants (62%), it is only after they have posted a cash or surety bond. People without the necessary financial means stay incarcerated irrespective of their chance of bond failure.

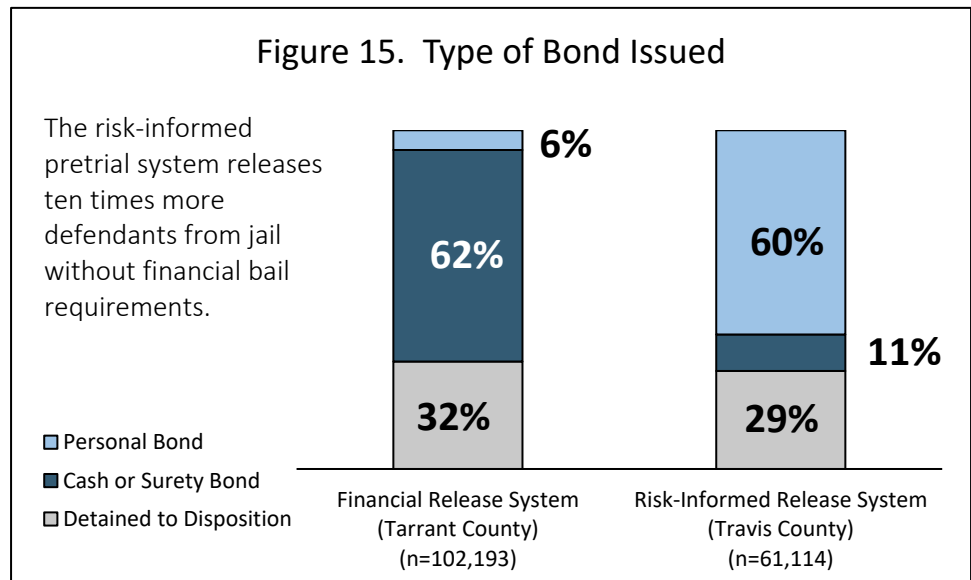
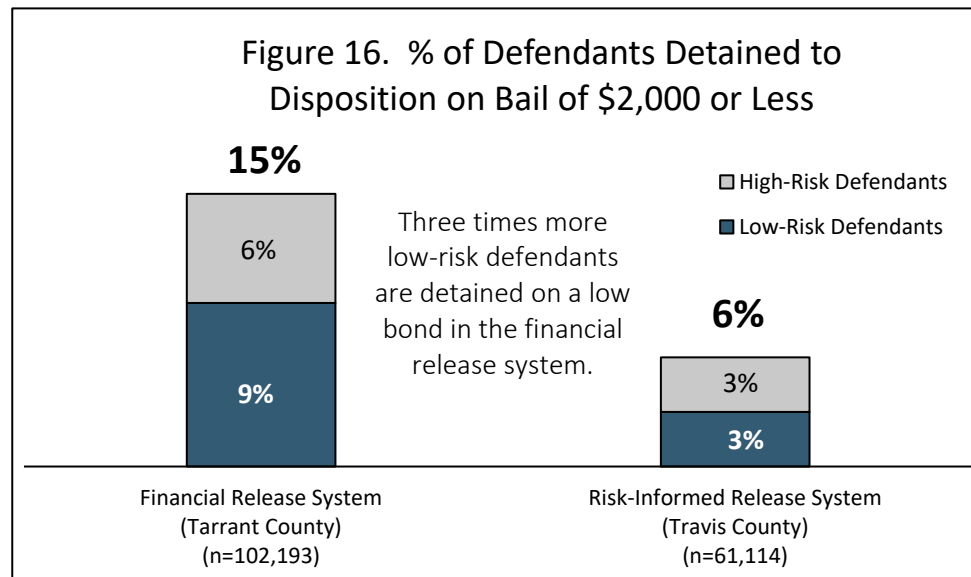


Figure 16 shows the impact of these systems on poor defendants. In the financial release system, more than twice as many people are jailed on a bail of \$2,000 or less (15% versus 6%). In most cases, people need just \$200 to post a surety bond for this amount. The discrepancy is even greater among people detained on a lower bail of \$500 or less: Three times more people are held on this amount in Tarrant County (3%) than in Travis County (1%). These individuals could get out of jail for as little as \$50, yet they remain incarcerated because they are unable to pay.

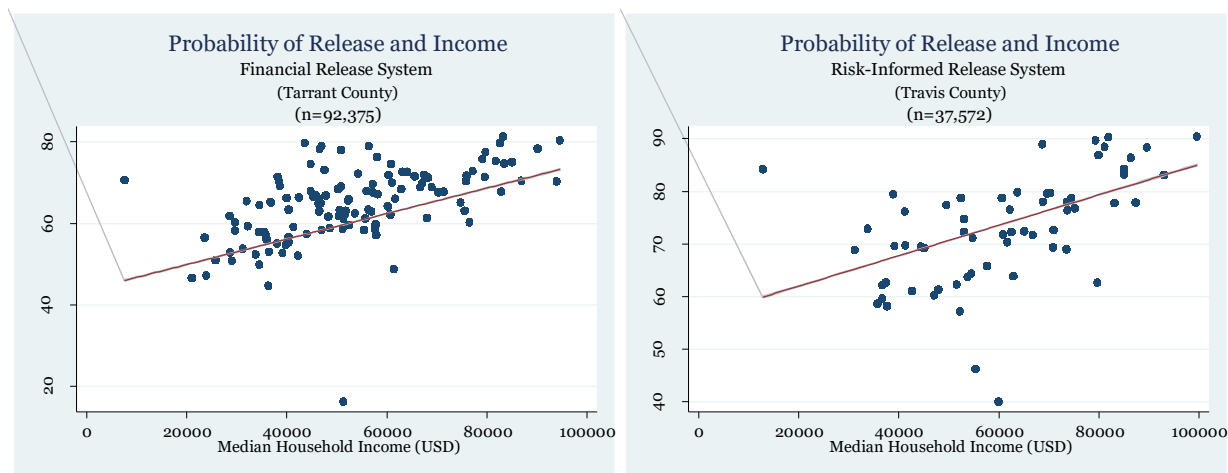
Even more important, the rate of “poverty holds” for low-risk people is three times higher in the financial release system. One of every ten Tarrant County defendants (9%) is held until disposition on a low bond even though statistical models show they would have little chance of bond failure if they were released. In risk-informed Travis County, just 3% of defendants who are safe to release are held



on a low bail. Yet jailing these individuals raises incarceration costs for the county while returning little if any improvement in safety or court appearance.

The difference in fairness is evident. In one system, poor people unable to afford bail remain incarcerated as pressure mounts to take a guilty plea. Indeed, the data show each day of detention<sup>41</sup> increases the already high chance of conviction by an average of 2% in Tarrant and Travis Counties.<sup>42</sup> Where release is determined by risk, on the other hand, more people at all financial levels are free until trial. These individuals gain the benefit of time in the community to stabilize their life, assemble a meaningful defense, and have the best chance at avoiding conviction.

Figure 17. Scatterplot of Median Zip-Code Income by Probability of Release within Three Days of Arrest



The scatterplot shown in Figure 17 is another way to demonstrate the linkage between financial ability and pretrial release. Each defendant’s median zip code income (horizontal axis) is plotted against their likelihood of being released from jail within three days of arrest (vertical axis). After controlling for other factors such as criminal characteristics that might also affect release, results show a stronger linear relationship in Tarrant County. The result indicates a close relationship between increasing wealth and defendants’ ability to get out of jail with a cash or surety bond. Because financial ability is less relevant for release in Travis County’s risk-informed system, the probability of release varies widely for defendants at each income point signifying a much weaker relationship between wealth and release.

## Summary

While ability to pay is a prerequisite for a cash or surety bond, in a risk-informed pretrial system financial wellbeing is no obstacle to release. As a consequence, ten times more people get personal bond, and one-third as many low-risk defendants are detained on a low bond. Risk-based release creates the conditions for fairer criminal proceedings. Individuals face less pressure to plea, have more access to diversion opportunities, and can assist attorneys to plan a more meaningful defense. While financial incentives for developing risk-informed pretrial systems are important, improving access to justice is at least equally compelling.

<sup>41</sup> Up to 30 days.

<sup>42</sup> The 30-day period includes 89% of defendants in Travis County and 85% of defendants in Tarrant County.



**PART II**  
**SURVEY OF PRETRIAL**  
**PROCESSING IN TEXAS**



# SURVEY OF PRETRIAL PROCESSING IN TEXAS

## Overview of the Survey

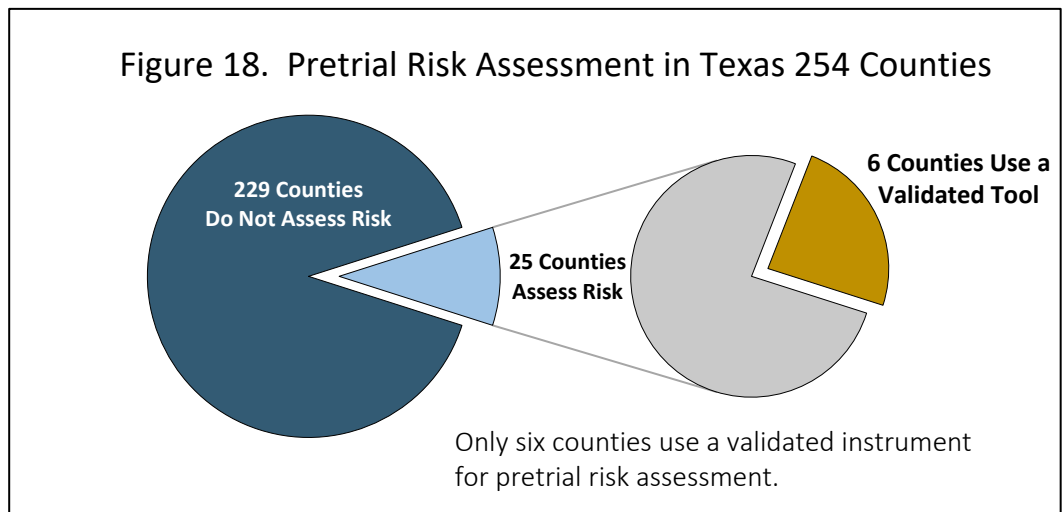
Limited information is available about pretrial practices currently in use statewide. To fill this information gap and gauge the effort required to expand risk-informed release, during the summer and fall of 2016 PPRI surveyed pretrial professionals in Texas. The practices examined were defined broadly as “interviews, assessments, or other information gathered to determine personal bond, surety bond, or conditions of pretrial release (e.g., type of bond, bond amount, conditions of supervision).” In addition to the survey of programs, more than 1,900 judges were also invited to share perspectives on practices in their jurisdictions. Responses were received from 605 judges (31%) representing 174 counties.<sup>43</sup>

Results from both surveys were combined to generate three findings. The first relates to the use of risk assessment. The second describes the current infrastructure for pretrial supervision. The third considers county respondents’ views on enhancements to current pretrial release and supervision capacity.

### FINDING 6: Despite advantages of safety, cost, and fairness, only six Texas counties currently use validated pretrial risk assessment.

Probation and parole departments routinely use risk and needs assessments to determine supervision and treatment strategies for offenders post-conviction; however, the same information is not widely available to judges responsible for setting bail following arrest. Pretrial risk assessment helps judges objectively evaluate the likelihood that an individual defendant, if released, will fail to appear in court or be re-arrested on new criminal charges when making the decision whether to detain.

At present, 25 of Texas’ 254 counties – roughly 10%– report that some form of risk assessment is used in their jurisdiction. Just six counties, however, report that their risk assessment instrument has been shown through research to reliably predict defendants’ chance of bail failure



(Figure 18 and Table 8). Bexar, Harris, Midland, and Travis counties have had pretrial offices for a decade or longer, adopting validated risk assessment as a recent enhancement. Two additional jurisdictions – Ector County

<sup>43</sup> See Technical Appendix for methodology.

and El Paso County – established new pretrial programs within the past year incorporating validated assessment from the beginning.

Table 8. Validated Risk Assessments in Current Use

	Implementation Dates		Validated Risk Assessment Instruments	
	Established Pretrial Program	Initiated Validated Risk Assessment	Primary	Secondary
<b>Bexar County</b>	Prior to 1990	2011	Locally Adapted Tool	Brief Jail Mental Health Screening
<b>Ector County</b>	2016	2016	Ohio Risk Assessment System-Pretrial Assessment Tool	None
<b>El Paso County</b>	2015	2015	Virginia Pretrial Risk Assessment Instrument	None
<b>Harris County</b>	1975	1993	Locally Adapted Tool	None
<b>Midland County</b>	2000	2014	Ohio Risk Assessment System-Pretrial Assessment Tool	None
<b>Travis County</b>	2005	2013	Ohio Risk Assessment System-Pretrial Assessment Tool	Ontario Domestic Abuse Risk Assessment (ODARA); Texas Christian University Drug Screening (TCUDS)

The Ohio Risk Assessment System-Pretrial Assessment Tool (ORAS-PAT) is used in Ector, Midland, and Travis counties. El Paso County selected the Virginia Pretrial Risk Assessment Instrument (VPRAI), while Bexar and Harris counties developed a customized tool that has been tested locally. These instruments are included as Appendix A.

### Pretrial Information Available to Courts

Where risk assessment is used, judicial discretion is still an important component of pretrial decision-making. Judicial orders are “always required” to release or set conditions of supervision in 21 of the 25 counties. Four jurisdictions – Bell, Brown, Mills, and Webb counties – have a means to release the lowest risk defendants on personal bond without direct judicial review, though standards are established by the judiciary and implemented by pretrial departments under their administrative direction.

While judges are responsible for deciding pretrial release, those responding to the survey say they rely heavily upon subjective judgments. Fewer than one in five described the defendant data now available for their consideration as “very reliable.” Moreover, most (55%) named the lack of validated risk assessment instruments as a specific obstacle to informed decision-making. Without reliable means to distinguish high- and low-risk

defendants, fewer than one-third of judges say they are confident their pretrial release decisions “definitely” promote public safety or encourage appearance in court.

Table 9. Information Sources Used by Counties that Conduct Pretrial Risk Assessment

Information Sources	Number of Counties Using This Source (n=25)
Current Charges	25
Criminal History	25
Interview with Defendant	25
Interview with Others	14
Risk Assessment Instrument Yielding a Score	11
Risk Assessment Instrument Yielding a Validated Score	5
Other sources of information <sup>44</sup>	5

Table 9 shows the sources of information that currently support judges’ pretrial release decisions. In the 25 counties that have an assessment protocol, the review is most commonly informed by current offense information, criminal history, and defendant interviews. About half of bail assessments also involve interviews with family members, landlords, employers, or others who know the defendant. Though risk assessments yield a score in 11 jurisdictions, only 6 are proven by research to predict bail failure.

The kinds of information gathered from these sources are listed in Table 10. After offense and criminal history data, factors considered may include indicators of community connectedness such as housing and employment; personal risk concerns such as mental health, domestic violence, or substance use; and information about family relationships.

Table 10. Pretrial Risk Factors Assessed

	Validated Assessments (n=6)	Unvalidated Assessments (n=19)
Offense and Criminal History	6	19
Housing and Employment Situation	6	16
Mental Health Issues	4	15
Domestic Violence Issues	4	15
Substance Use	3	14
Family Relationship	4	10
Other Risk Factors Considered <sup>45</sup>	3	4

In nearly three out of four jurisdictions that conduct pretrial risk assessment, judges have identified some classes of defendants as ineligible for personal bond. Exclusion criteria include offense charged; bond amount

<sup>44</sup> Other sources of information reported by five jurisdictions include the “continuity of care” mental health query conducted at jail intake, Thompson Reuters Clear online investigation software, and locally developed pretrial criteria and guidelines.

<sup>45</sup> Other risk factors named by seven jurisdictions include prior failures to appear in court, pending charges, supervision status at the time of the arrest, age at first arrest, gender, gang membership, holds, education, and telephone access.

set by the court; defendants’ criminal history; prior prison sentence; probation, parole, bond, or warrant status at the time of the offense; residence; or citizenship.

To increase efficiency, pretrial risk evaluation is commonly integrated with other case processes. In 19 counties, the review is done at the same time as the indigent defense eligibility determination. Five counties conduct reviews when people are screened for pretrial diversion or specialty court programs, and the same number combine risk assessment with charging, jail classification, and mental health evaluation during jail book-in.

### Uses of Pretrial Risk Assessment

In almost every jurisdiction that does risk assessment, results are used to release defendants on personal bond.<sup>46</sup> Systems described here as “personal bond-oriented” generally apply risk information to free low-risk defendants and detain high-risk defendants. However, other jurisdictions, described as “financial bond-oriented,” use risk assessment in ways that do not meet the objectives of “risk-informed release.” These systems more often view risk assessment and personal bond as a means to clear jails of people that are unable to pay cash or surety bonds.

Table 11 summarizes the distinguishing attributes of each approach. In “financial bond-oriented” jurisdictions, fewer individuals are considered for personal bond, often only after several days in detention, and assessment is used primarily to set conditions of supervision. Importantly, unless broad-based validated risk assessment is conducted early in case processing, and findings are tied directly to the court’s custody determination, the cost, safety, and fairness benefits linked to risk-informed release in Part I of this report are unlikely to be attained.

Table 11. Characteristics of “Personal Bond-Oriented” and “Financial Bond-Oriented” Pretrial Systems

	Personal Bond Oriented Systems	Financial Bond Oriented Systems
<b>Assessment Rates:</b>	High pretrial assessment rates impacting a majority of defendants magistrated	Low pretrial assessment rates impacting a small portion of defendants magistrated
<b>Timeliness of Release:</b>	Prompt release on personal bond for defendants who qualify – usually within 48 hours of arrest.	Delayed release on personal bond – more than 48 hours, and sometimes exceeding 72 hours
<b>Release without Conditions:</b>	Lowest-risk people released on personal bond without conditions	Little if any chance of release on personal bond without conditions
<b>Validated Risk Assessment:</b>	Consistent use of an evidence-based pretrial risk assessment tool.	Do not use a validated risk assessment protocol

Tables 12 and 13 show the number of counties in each group, and the data used to classify jurisdictions are provided in Appendix C. Few jurisdictions meet every criterion for the category assigned. On the whole, however, the pattern provides a useful way of understanding how counties currently interpret and apply the purposes of risk assessment. The majority of counties with risk assessment capacity consider the purpose as a

<sup>46</sup> Exceptions include El Paso County where validated risk scores are provided to judges without an accompanying bond recommendation, and Harrison County where unvalidated assessment is used to set conditions for people on surety bond supervision.

Table 12. Attributes of Counties with “Personal Bond” and “Financial Bond” Orientations (n=25)

	Personal Bond Oriented Systems (n=7)	Financial Bond Oriented Systems (n=18)
<b>Assessment Rates:</b>	<ul style="list-style-type: none"> <li>In six counties, 60% to 100% of people magistrated are assessed for risk.</li> <li>Ector County is an exception. This new pretrial program uses a validated tool to evaluate fewer than 20% of people charged with misdemeanors, and 40% to 60% of those charged with felonies.</li> </ul>	<ul style="list-style-type: none"> <li>In ten counties, risk is assessed for only a small proportion of defendants – fewer than 20% of people magistrated in most cases.</li> <li>In three counties, a larger proportion of defendants is assessed (at least 80%).</li> <li>In five counties, respondents did not know the percent of defendants assessed.</li> </ul>
<b>Timeliness of Release:</b>	<ul style="list-style-type: none"> <li>In seven counties, people qualifying for personal bond are usually discharged soon after arrest: within 24 to 48 hours.</li> </ul>	<ul style="list-style-type: none"> <li>In nine counties, people are generally not released on personal bond for 48-72 hours following arrest.</li> <li>In seven counties, defendants are released more quickly: 24-48 hours</li> <li>In two counties, respondents did not know the time required to release defendants.</li> </ul>
<b>Release without Conditions:</b>	<ul style="list-style-type: none"> <li>In five counties, risk scores are used to release eligible defendants on personal bond without monitoring or conditions.</li> <li>There are two exceptions. In Harris County defendants on personal bond always have supervision requirements.</li> </ul>	<ul style="list-style-type: none"> <li>In thirteen counties, release on personal bond is always accompanied by mandatory conditions of supervision.</li> <li>In four counties, defendants are sometimes released on personal bond with no supervision.</li> <li>Respondents in one county did not know policies regarding release without supervision.</li> </ul>
<b>Validated Risk Assessment:</b>	<ul style="list-style-type: none"> <li>Six counties report using validated risk assessment instruments.</li> <li>Bell County expedites personal bond for a large proportion of defendants, but it does so without validated instruments.</li> </ul>	<ul style="list-style-type: none"> <li>No “financial bond-oriented” counties use validated pretrial risk tools to determine personal bond.</li> </ul>

secondary fall-back after as many people as possible pay financial bail. The finding implies that any effort to expand risk-informed pretrial release will require a strong education component.

Table 13. Bond “Orientation” of Counties That Do Pretrial Risk Assessment (n=25)

	Personal Bond Oriented Systems	Financial Bond Oriented Systems
<b>Validated Assessment</b>	<b>6 counties</b>	None
<b>Invalidated Assessment</b>	1 county	18 counties

These data show risk assessment results are deployed in different ways by jurisdictions. “Financial bond-oriented” approaches fundamentally undermine the objectives of risk-informed pretrial release. The archetypes of “personal bond-oriented” or “financial bond-oriented” jurisdiction offer a useful heuristic for describing current practice, and demonstrate that many counties may need training and guidance to fully integrate risk-informed release into pretrial decision-making.

### Summary

Although 25 Texas counties do some form of pretrial determination, only six report using validated instruments shown to reliably predict bail failure. Where risk assessment is done, the courts retain a great deal of discretion about defendant detention, though just one in five judges described the information currently available to the courts as “very reliable” and over half cite the need for more valid decision-making tools.

Most jurisdictions that do risk assessment use results for one of two broad purposes: Either to promptly achieve risk-based release for low-risk people, or to set personal bond with monitoring conditions for people who have not successfully posted bail. Validated risk assessment is a powerful tool for deciding release. However, survey results show it is not widely available in Texas or may be used in ways that do not support the objectives of risk-informed release. This highlights the need for policies and training to support risk-informed release statewide.



**FINDING 7: Pretrial personal bond or surety bond supervision programs were identified in 100 Texas counties. Most of these programs are implemented by existing Community Supervision and Corrections Departments (CSCDs).**

In addition to predicting the risk of flight and danger to the community, risk data can help judges set appropriate terms of pretrial release. Survey results find 100 Texas counties with programs dedicated to the oversight of people on personal or surety bonds. This number includes the 25 counties that use risk assessments along with an additional 75 that do not. Eighteen jurisdictions provide personal bond supervision only, 19 jurisdictions provide surety bond supervision only, and 63 jurisdictions provide both. Sixty-one percent of jurisdictions (154) have no pretrial supervision programs. Where pretrial supervision programs exist, they generally prioritize higher-risk people with the average caseload comprised of roughly two-thirds felony defendants and one-third misdemeanants.

**Operational Structures**

Texas counties receive very little funding from the state for the oversight of pretrial defendants. Although the primary mission of Texas Department of Criminal Justice’s Community Supervision and Corrections Departments (CSCD) is to supervise adult probationers, departments may devote up to one-tenth of one full-time equivalent staff person for “courtesy supervision” of a limited number of people awaiting trial if requested by judges.<sup>47</sup> Oversight of larger numbers of pretrial defendants requires the investment of local funds.

**Table 14. Bond Supervision Program Administration**

	<b>Number of CSCD Bond Supervision Programs</b>	<b>Number of County Operated Bond Supervision Programs</b>
<b>Personal Bond Only</b>	5	13
<b>Surety Bond Only</b>	19	0
<b>Co-Located Personal and Surety Bond</b>	53	8
<b>Independently Operated Personal and Surety Bond</b>	2	2

\* In Harris and Tarrant Counties, CSCD’s operate surety bond supervision programs and an independent county office operates personal bond programs. These jurisdictions are therefore counted in both columns.

Where jurisdictions have opted to create bond supervision programs, they typically rely on CSCDs to provide that service. Table 14 shows the program types by administrative location. Surety bond supervision programs, whether alone or combined with personal bond monitoring, are virtually always housed in the local CSCD. Harris and Tarrant Counties are exceptions; their surety bond monitoring is performed by CSCDs alongside independently operating personal bond offices.

<sup>47</sup> Texas Department of Criminal Justice, Policy Statement CJAD-PS-09. "Operation of Certain Supervisions other than Court Ordered Community Supervision or Pretrial Interventions." Carey Welebob, TDCJ-CJAD Director, to CSCD Directors. September 1, 2011.

Table 15. Summary of Pretrial Supervision Programs

	<b>JURISDICTIONS WITH “SUBSTANTIAL” PRETRIAL SUPERVISION PROGRAMS (n=55)</b> <ul style="list-style-type: none"> <li>➤ Operational costs ranging from \$25,000 to \$4 M (avg. \$416,280)</li> <li>➤ Staff FTE ranging from 1 to 39 (avg. 3.2)</li> <li>➤ Active caseload ranging from 30 to 5,500 defendants (avg. 573)</li> </ul>		<b>JURISDICTIONS WITH “MINIMAL” PRETRIAL SUPERVISION PROGRAMS (n=45)</b> <ul style="list-style-type: none"> <li>➤ Operational costs ranging from \$0 to \$25,000 (avg. \$4,266)</li> <li>➤ Less than 1 staff FTE (avg. 0.1)</li> <li>➤ Active caseload ranging from 1 to 15 defendants (avg. 9.5)</li> </ul>	
	<b>COUNTY CONTRIBUTES TO COST OF OPERATION</b>	<b>DEFENDANTS PAY COST OF OPERATION</b>	<b>DEFENDANTS PAY COST OF OPERATION</b>	
<b>Personal Bond Supervision Only</b>	Cameron County * Erath County Midland County + Tom Green County	Callahan County * Coleman County * Matagorda County Medina County * Nueces County Taylor County * Victoria County Webb County *	Colorado County Gonzales County Jasper County Lavaca County Newton County Wharton County *	
<b>Surety Bond Supervision Only</b>	Brazoria County Denton County Stephens County Young County	Gregg County Hardin County Montgomery County	Atascosa County Bosque County Comanche County Frio County Hamilton County Karnes County	Kaufman County LaSalle County Lamar County Orange County Wilson County Wood County
<b>Both Personal and Surety Bond Supervision</b>	Anderson County Bell County ^ Bexar County + Blanco County Bowie County * Brown County * Burnet County Caldwell County * Comal County * Ector County + El Paso County + Harris County + Hays County * Liberty County * Llano County Lubbock County * Mills County * San Saba County Tarrant County * Travis County + VanZandt County Williamson County *	Brazos County Collin County Fannin County Fort Bend County Grayson County Guadalupe County Harrison County * Hidalgo County Kenedy County Kleberg County Palo Pinto County Parker County Real County Uvalde County	Brewster County Crockett County Dawson County Gaines County Garza County Henderson County Hill County Jeff Davis County Lynn County Nacogdoches County Pecos County Presidio County Reagan County	Sutton County Upton County Aransas County Bee County Deaf Smith County Glasscock County Howard County Live Oak County Martin County McMullen County Oldham County San Jacinto County San Patricio County Trinity County

\* Unvalidated “financial bond-oriented” risk assessment protocol

^ Unvalidated “personal bond-oriented” risk assessment protocol

+ Validated “personal bond-oriented” risk assessment protocol

If only personal bonds are supervised, however, the county is more likely to have established a stand-alone office for the purpose. Overall, just one in five bond supervision programs are operated by independent departments. Pretrial programs vary widely across the state in their scope and capacity, but for the purposes of this study they can be broadly classified into two major groups. Table 15 shows one group of 55 counties that can be described as providing programs involving “substantial” supervision initiatives. Features of substantial programs include operational costs ranging from \$25,000 up to \$4 million; at least one full-time-equivalent staff person and an active caseload ranging from 30 to as many as 5,500 defendants. Approximately half of jurisdictions operating “substantial” pretrial supervision programs are funded in full or in part by the counties they serve, while the remainder appear to be fully supported by defendant fees.

Table 15 also lists counties with “minimal” pretrial monitoring capacity. These programs provide what appears to be mostly “courtesy supervision” to an active caseload of no more than 15 defendants per program, with less than one full-time equivalent staff person. Operational budgets are below \$25,000 and are paid entirely by defendant fees.

### Pretrial Supervision Services

When an array of supervision alternatives are available, judges have greater flexibility to match service requirements with defendant needs. Programmatic options are similar for individuals on both personal and surety bond supervision, likely because they are frequently located together under CSCD administration.

Common pretrial supervision interventions are summarized in Table 16. In-person reporting is the most widely available option, reported in 97% of the state’s pretrial programs. Lower-level monitoring – mail, phone, or text reporting, or court date reminders – is provided in approximately two-thirds of programs and is more commonly offered with personal bond.

Table 16. Types of Pretrial Supervision Offered

	Personal Bond Supervision (n=81)	Surety Bond Supervision (n=82)
In-person reporting	99%	95%
Random drug testing	91%	85%
Court date reminders	77%	59%
Mail, phone, or text reporting requirements	74%	61%
Alcohol monitoring	60%	65%
Electronic/GPS monitoring	60%	67%
Scheduled drug testing	40%	44%
Field visits	32%	30%
Other <sup>48</sup>	16%	15%

<sup>48</sup> Other types of supervision named were internet reporting, continuous alcohol and location monitoring, special caseloads (e.g., mental health, domestic violence), and unspecified additional conditions ordered by the court.

Drug and alcohol monitoring, also a core feature of pretrial supervision, is provided by nine out of ten programs. Random drug testing is most common, though alcohol monitoring and scheduled drug testing are also available in some programs. Electronic or GPS monitoring is provided by two-thirds of supervision programs, and field visits are conducted in nearly a third of all jurisdictions.

Counseling or treatment is a component of pretrial monitoring in nearly one-third of surety bond or personal bond supervision programs. Therapeutic interventions generally address three main concerns: substance abuse, mental health, or domestic violence. Survey respondents report that decisions regarding specific forms of treatment are most often determined through pretrial assessments and clinical screenings; however, other considerations include defendant requests to the court, positive drug test results, or the offense charged.

### Cost to Defendants for Supervision

As part of a larger trend toward cost-shifting in the criminal justice system, individuals released with conditions are commonly asked to contribute to the expense of their own monitoring. Table 17 provides an overview of supervision fees charged to defendants.

One-time fees are rarely required for release. About one third of personal bond programs charge a fee equal to 3% of the value of the bond,<sup>49</sup> or when fixed fees are required, they may range from as little as \$10 to \$70 or more. Most personal bond programs (75%) report that they will not refuse release for people who are unable to pay. However, people that cannot make a required one-time surety supervision fee are almost certain to be detained (83%).

Monthly supervision fees are more common, assessed by nearly every personal (75%) and surety bond (79%) program. Moreover, defendants on personal bond pay about the same monthly supervision costs as defendants on surety bond.

Table 17. Amount of Pretrial Supervision Fees Charged

	ONE-TIME FEES		MONTHLY FEES	
	Personal Bond Supervision Programs (n=71)	Surety Bond Supervision Programs (n=62)	Personal Bond Supervision Programs (n=80)	Surety Bond Supervision Programs (n=82)
<b>No Cost</b>	56%	89%	25%	21%
<b>3% of Bond</b>	30%	N/A	N/A	N/A
<b>Less than \$30</b>	0%	6%	10%	21%
<b>\$30 to \$49</b>	11%	2%	22%	19%
<b>\$50 to \$69</b>	0%	0%	41%	39%
<b>\$70 or more</b>	3%	3%	1%	0%
	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

<sup>49</sup> See Art. 17.42, Section 4(a), CCP.

In most cases, defendants are responsible for the costs of their own court-ordered treatment. Service providers are typically for-profit treatment centers requiring insurance or self-pay, or they are community-based non-profits organizations, many of which have sliding-scale fees.

Survey respondents report that an average 41% of individuals on personal bond fail to pay required supervision fees in a typical month. Compliance rates are slightly higher for surety bond programs, where an average of 32% of defendants fail to make payments. Accommodations for indigence are made for only approximately 16% of people being supervised.

## Summary

Structurally, most of the 100 jurisdictions that do pretrial supervision locate the programs administratively in local CSCDs. About half of these programs are “substantial” in nature, with significant operational budgets, staffing, and caseloads. The other half limit their work to “courtesy supervision” of selected defendants at the request of judges requiring effort less than 10% of an FTE staff person.<sup>50</sup>

A range of monitoring options can help “right-size” supervision requirements to address the personalized risks of individual defendants. While in-person reporting and random drug testing are the most commonly available forms of monitoring, low-level check-ins and court date reminders are also widely available. Counseling may also be available at defendant expense for substance abuse, mental health, or domestic violence risk factors.

Defendants commonly pay some or all of the costs of monitoring. Monthly supervision fees are charged by about four of every five supervision programs. Increased use of validated risk assessment can help the courts make more pretrial services more cost-effective by directing monitoring resources where they are most likely to meaningfully reduce criminal activity and increase court appearance.

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<sup>50</sup> *Supra* note 47.

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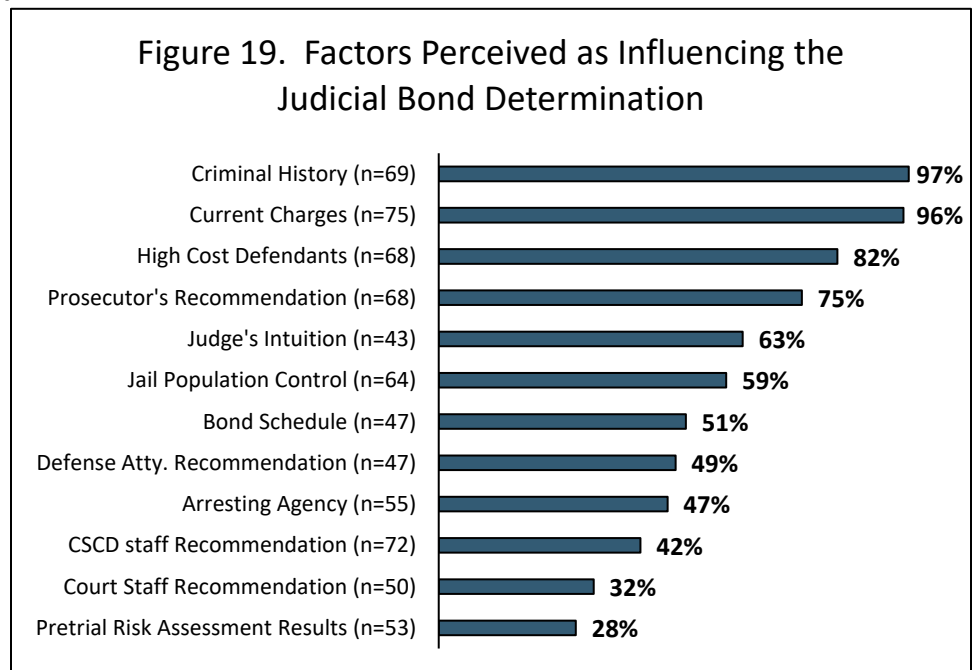
## FINDING 8: Stakeholders are optimistic about the feasibility of pretrial reform including validated risk assessment and personal bond supervision.

Survey results reveal limited infrastructure for risk assessment. More counties have programs for pretrial supervision, though only about half of these have dedicated resources and staff. Judges and pretrial stakeholders engaged in pretrial programs were asked questions about objectives, challenges, and strategies for expanding the use of both risk assessment and supervision capacity as elements of pretrial reform.

### Available Tools for Judicial Bond Determination

Survey respondents identified pretrial risk assessment as the single least influential factor influencing judges' decisions to release or detain defendants awaiting trial (Figure 19). Without validated instruments to guide their decisions, courts have come to depend on other, in some case less reliable, information. Indeed, two of every three judges surveyed were uncertain whether their pretrial release decisions effectively promote public safety or encourage appearance in court.

Defendants' criminal history and current charges significantly influence the judicial bail decision in more than 95% of jurisdictions responding. In approximately half of counties, courts set a bail amount for each charge category in advance. However, pre-determined bail schedules are problematic because they presume financial conditions rather than personal bond, and they fail to account for individualized factors affecting each defendants' likelihood of bond failure.<sup>51</sup>



Information from other justice system entities are also commonly part of the courts' pretrial bail determination. Information from the prosecutor is weighed most heavily, though other actors with input include the defense attorney, the arresting agency, community supervision staff, and court staff. These all supersede pretrial risk assessment in determining defendants' liberty.

In two-thirds of jurisdictions, survey respondents say judges rely heavily on their own "gut feeling" when deciding release even though studies have shown judicial intuition is not a reliable means to tell which

<sup>51</sup> In the case of *Stack v. Boyle* (342 US 1, 1951), the US Supreme Court upheld that bail must be based on an individualized assessment of a defendant's strengths and weaknesses. See also, American Bar Association Criminal Justice Standards on Pretrial Release, Standard 10-5.3: Release on Financial Conditions. Retrieved from [http://www.americanbar.org/publications/criminal\\_justice\\_section\\_archive/crimjust\\_standards\\_pretrialrelease\\_toc.html](http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_pretrialrelease_toc.html)

defendants will meet their pretrial obligations.<sup>52</sup> Nearly 40% of judges surveyed affirm that they depend upon intuition when making decisions about bail, presumably in part because more reliable tools are largely unavailable.

## Attitudes toward Expanding Pretrial Risk Assessment and Supervision

Survey respondents – all of whom are experienced with the implementation of pretrial programs – are optimistic that reform is feasible. Nearly three-fourths of pretrial stakeholders and judges both agreed that personal bond supervision in particular would not be too difficult to achieve. Nearly half of pretrial staff and judges say they already release defendants on their own recognizance. Those that do not anticipated such a program would be either easy to establish or they reported being neutral on the matter.

Respondents were somewhat less certain about the ease of integrating validated pretrial risk assessment, though a majority felt such a change was not unattainable. A majority of those surveyed expressed concern that insufficient resources for training and capacity-building would be available to support the transition. Lack of familiarity with assessment may also be a deterrent. Fewer than 15% of pretrial professionals responding have experience with pretrial risk evaluation (18% of judges), typically using unvalidated protocols.<sup>53</sup> Those that have no such experience expect implementation of risk assessment would be easy or they report being neutral on the matter. Overall, more than 80% of pretrial professionals and 70% of judges either support or do not oppose adopting a pretrial risk tool if one was made available statewide.

## Pretrial Program Implementation Strategies

Not only do most jurisdictions surveyed believe that risk-based pretrial protocols are both desirable and feasible, there is broad-based agreement on the steps required to move forward. At least four out of five respondents agree essential elements of any effort to reform pretrial practices should include:

- ✓ Training of judges
- ✓ Funding to increase service capacity
- ✓ Funding to increase staff capacity
- ✓ Training of county officials
- ✓ Timely pretrial staff access to the defendant

Elimination of bond schedules, supporting pretrial success with supervision locations in the community, and extending training to prosecutors and defense attorneys were additional suggestions named by individual respondents.

Nearly seven out of ten pretrial professionals and judges surveyed agree that responsibility for leading the transition to risk-based pretrial release falls largely to the courts. A number of external resources are available to assist their efforts. The Texas Judicial Council's Criminal Justice Committee has recommended an automated "no-interview" risk assessment system; training for magistrates; and funding for pretrial supervision, among

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<sup>52</sup> Downs, A. Chris, and Phillip M. Lyons. "Natural Observations of the Links between Attractiveness and Initial Legal Judgments." *Personality and social psychology bulletin* 17, no. 5 (1991): 541-547

<sup>53</sup> See generally, *supra* "Part I, Finding 6."



other things, be made available to all Texas counties.<sup>54</sup> Non-profit advocacy groups like the Pretrial Justice Institute and the National Center or State Courts offer technical assistance with bail reform.

Just as respondents identified key elements of reform, they also assessed a series of potential challenges to changing pretrial practice. A majority of respondents believe the greatest barrier will be insufficient funding for integrating risk assessment and personal bond supervision into routine criminal case processes. Most also worried that any funds provided may not be sufficient to cover the full costs of implementation.

Political constraints were mentioned as well by some participants. Arranging support from key local stakeholders and circumventing bond company influence were a concern for a moderate number of respondents. Worries about the logistical aspects of pretrial reforms were few. Defendant eligibility criteria, location of supervision offices, and data tracking systems were generally perceived as surmountable challenges, mentioned by approximately a quarter of respondents.

## Summary

Pretrial professionals and judges generally support expanding pretrial risk assessment tools and supervision. Without more robust decision-making resources available, some judges have come to rely on bail schedules, the opinions of prosecutors and other local stakeholders, or their own intuition when deciding bond. However, they are optimistic that reform is feasible and that judges should take the lead. Jurisdictions prioritize supports including training for judges and county officials, funding for staff and services, and procedural changes to ensure prompt contact with defendants. The greatest concerns centered on adequacy of resources.

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<sup>54</sup> *Supra* note 5.



## **CONCLUSIONS**



# CONCLUSIONS

Stakeholders in Texas and the nation are increasingly questioning the use of financial bail as a means of pretrial release. After reviewing the major concerns about the current bail system, the Texas Judicial Council's Criminal Justice Committee issued an October 2106 report articulating an eight-point reform agenda. They then asked PPRI to gather new data from Texas jurisdictions to further inform their leadership on this issue. The two-part study combined a multiple case study analysis of two jurisdictions with a statewide survey of pretrial practitioners and judges.

The following paragraphs consider the study's implications for each of the Committee's major recommendations. In general, the research finds the steps for bail reform prioritized by the judiciary are responsive to the challenges identified, can be feasibly implemented, and are likely to yield significant benefits for jurisdictions.

**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.*

## Key Findings:

- Judges agree that valid risk assessment is needed. Those surveyed generally believe tools currently available to guide pretrial decisions are inadequate. As a result, they rely heavily upon subjective judgments. Two-thirds of judicial respondents are not fully confident that their pretrial release decisions promote public safety or court appearance, and more than half named validated risk assessment as a specific need.
- The study shows valid risk data can improve judges' ability to correctly classify defendants. Without risk information available, the financial bail system released 12% more potentially dangerous people and detained 24% more people who could have been safely released. Risk assessment tools give judicial officers better information to make the right custody decision.
- A system of risk-informed pretrial release can be costly, though this study finds it is money well-spent. After accounting for the total expenses of risk assessment and supervision paid by counties and defendants, costs are 1.5 times higher where risk-informed classification is used. However, all other pretrial expenses are reduced by a substantial margin. Lower rates of new criminal activity among people on bond bring down costs related to criminal processing (i.e., arrest, prosecution, court hearings, and indigent defense), victimization, and detention due to re-arrest. There are also fewer post-arrest jail days and lower net costs due to misclassification in the risk-informed system. Overall costs are one-third lower where pretrial risk assessment is used.
- Moreover, the evidence suggests use of an automated statistical algorithm can achieve similar results at lower cost. The ORAS-PAT tested here gathers information through interviews. However, the study finds nearly identical custody recommendations can be achieved using a "no interview" assessment using information that is widely available in most county criminal record systems. The Arnold Foundation's Public Safety Assessment-Court is one such protocol that has been validated in over 300 jurisdictions

nationally.<sup>55</sup> That or a similar algorithm-based tool could expedite the introduction of risk assessment in Texas jurisdictions.

**Recommendation 2:** *The Legislature should amend the Texas Constitution bail provision and related bail statutes to provide for a presumption of pretrial release through personal bond, leaving discretion with judges to utilize all existing forms of bail.*

**Key Findings:**

- This study finds that where personal bond is automatic for low-risk defendants, ten times more people get out of jail without financial requirements. The presumption of personal bond effectively removes financial ability as an obstacle to liberty.
- As a result, fewer people remain in detention for inability to pay a low bond. In the financial release system, more than twice as many people are jailed on bail of \$2,000 or less, unable to pay even \$200 for a commercial bond. Three times as many are unable to pay bail of just \$500 or less.
- Risk-appropriate release matters. The data show each day of detention increases the already high chance of conviction by an average of 2% in both Tarrant and Travis Counties. A presumption of personal bond for risk-eligible people is fairer for all defendants.

**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.*

**Key Findings:**

- High-risk defendants who are able to pay for financial release pose a serious threat to communities. This study finds that in the financial release system where risk is not considered, 20% more crimes, and 12% more violent crimes, are committed by dangerous people released on bond. Average victim costs per defendant are more than 3.5 times higher than where risk assessment is used.
- Yet judges are unable to respond with appropriate detention of these most dangerous defendants. With few exceptions, the Texas Constitution currently requires the courts to release anyone who can afford to pay bail.
- As a consequence, the survey finds 82 jurisdictions have established pretrial supervision programs for the purpose of monitoring high-risk individuals on surety bond. In most cases, these are people the courts would otherwise choose to detain. The current right to bail constrains the discretion of Texas courts to protect communities from people they consider unsafe for release.

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<sup>55</sup> Laura and John Arnold Foundation. (2013). Developing a National Model for Pretrial Risk Assessment. VanNostrand, M. and Lowenkamp, C. (2013). Assessing Pretrial Risk without a Defendant Interview, Laura and John Arnold Foundation.

**Recommendation 4:** *The Legislature should provide funding to ensure that pretrial supervision is available to defendants released on a pretrial release bond so that those defendants are adequately supervised.*

**Key Findings:**

- Survey results show considerable capacity for pretrial supervision is currently available through the state’s existing network of Community Supervision and Corrections Departments. In fact, of the 100 Texas counties that do pretrial monitoring, 80% work with local CSCDs to provide the necessary services. By leveraging existing programs for adult probationers, an array of interventions can be made available to “right-size” pretrial requirements based on individualized risks. Available services range from court reminders and mail or phone check-ins to drug testing or location monitoring and even field visits.
- However, funding will be needed to expand available services. Under current CJAD policy, CSCDs use state funds to support a maximum one-tenth of one full-time equivalent staff person for the oversight of pretrial defendants. About half of the programs that now do pretrial monitoring offer minimal oversight within these limitations. Just 55 jurisdictions have pretrial supervision programs that are considered “substantial” with staff ranging from 1 to 39 professionals, budgets ranging from \$25,000 per year up to \$4 million, and active caseloads ranging from 30 to 5,500.
- Adequacy of funding to expand risk-based pretrial protocols was among the leading concerns voiced by pretrial professionals and judges surveyed. Even if resources are provided to integrate new practices into routine criminal case processes, local stakeholders are concerned the amount available will not cover the full cost of implementation.

**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.*

**Key Findings:**

- Very few counties surveyed have prior experience with pretrial risk assessment or risk-based monitoring. Judges and others key to successful implementation are generally unfamiliar with the aims or approaches of risk-informed release.
- In the few counties where risk assessment and personal bond are available, rather than replacing financial requirements, they are largely used to clear jails of people who are unable to pay a cash or surety bond. Training is an important means to help local stakeholders understand the ideals of risk assessment and personal bond, and to provide supports required to achieve the full benefits such reforms can bring.

**Recommendation 6:** *The Legislature should ensure that data on pretrial release decisions is collected and maintained for further review.*

**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.*

- The research summarized herein did not specifically inform the Committee’s Recommendations 6 through 8. Nonetheless, these measures appear reasonable to support the objectives of reform.

## Summary

In conclusion, this study finds empirical support for the pretrial reform agenda put forth by the Texas Judicial Council’s Criminal Justice Committee. Findings clearly show that with validated risk assessment, judges can make more accurate custody decisions, releasing those who qualify and detaining those with a high risk of bail forfeiture.

Risk-informed personal bond not only reduces detention of the poor, but they also help jurisdictions avoid the high costs and trauma that occur when dangerous people make bail. Risk-based release, combined with a Texas Constitutional amendment allowing detention without bail, give courts the tools and authority needed to keep high-risk people off the streets while awaiting trial.

New funding will be needed to expand current pretrial supervision capacity for individuals of moderate risk, but the existing statewide CSCD network offers a robust infrastructure upon which to build. Training for magistrate judges and other local stakeholders will also be needed to provide education and guidance needed for successful implementation.

When asked if they believe these changes are possible, most pretrial professionals and judges were optimistic. If the outcomes observed in this research can be replicated statewide bail reform will be an effort worth undertaking.



# APPENDIX A

## VALIDATED RISK ASSESSMENTS



**RISK ASSESSMENT**

Question	Score
1. Current Offense (burglary, robbery, weapons, other property crime, or man del C/S) Yes = 1 Else = 0	0
2. Current Legal Status (currently on probation, parole, or bond?) Yes = 2 Else = 0	0
3. Prior Conviction (count adult and juvenile) None or One Misdemeanor = 0 2 or more Misdemeanors or 1 prior Felony = 1 2 or more Felony convictions = 2 Multiple Convictions for Violent Felony Crimes = 3	0
4. Prior FTA Warrants w/in the past 5 yrs None = 0 1 = 1 2 or more = 2	0
5. Age at First Arrest Under Age of 18? Yes = 2 Else = 0	0
6. Gender Male = 1 Female = 0	1
7. Residency (lives with immediate family/spouse/uncle/aunt/children or self?) Yes = 0 Else = 1	0
8. Employment (full time, attending school, retired, disabled, or homemaker?) Yes = 0 Else = 1	0
9. Current Age Under 31 = 2 31 - 49 = 1 50 years and above = 0	1
<b>Score: Low Risk</b>	<b>Total: 2</b>

0-3 = LOW, 4-5 = LOW MODERATE, 6-8 = MODERATE, 9-UP = HIGH

EL PASO RA: Virginia Pretrial Risk Assessment Instrument

TOTAL SCORE: <b>0</b>
Risk Level:

Levels: 0/1 – Low, 2 – Below Average, 3 – Average, 4 – Above Average, 5-9 – High

**DATE:** \_\_\_\_\_

<b>Name:</b>	<b>DOB:</b>	<b>Gender:</b>	<b>Race:</b>
<b>Case/Warrant#:</b>	<b>PersonID: SO #:</b>		<b>Booking Number:</b>
<b>Current Address:</b>			<b>Length at Current Address:</b>

**Charge/Category:**

**Offense(s):**

**Is Defendant Currently Under Supervision:**

**Case NO(s)/Charges:**

**Number of Prior FTA's:**

**Case No(s)/Charges:**

**Number of Prior Violent Offenses:**

**Case No(s)/Charges:**

**Does Defendant have any pending charges:**

**Case No(s)/Charges:**

**Attorney of Record:**

**Does Defendant have outstanding Warrants from other Jurisdictions: Unknown**

**Case No(s)/Charges: UNKNOWN**

**Current Employer / Primary Child Caregiver:**

**Length of Time:**

**General Notes:**

Current Member of one of the following: (United States Armed Forces, United States Reserves, National Guard or State Guard)?

Are you a Veteran?

Are you a dependent of a Veteran or current member of the Armed Forces?

**OHIO RISK ASSESSMENT SYSTEM: PRETRIAL ASSESSMENT TOOL (ORAS-PAT)**

Name: \_\_\_\_\_ Date of Assessment: \_\_\_\_\_

Case #: \_\_\_\_\_ Name of Assessor: \_\_\_\_\_

<b>Pretrial Items</b>		<b>Verified</b>
1.1 Age at First Arrest 0 = 33 or Older 1 = Under 33	<input type="text"/>	<input type="text"/>
1.2 Number of Failure-to-Appear Warrants Past 24 Months 0 = None 1 = One Warrant for FTA 2 = Two or more FTA Warrants	<input type="text"/>	<input type="text"/>
1.3 Three or more Prior Jail Incarcerations 0 = No 1 = Yes	<input type="text"/>	<input type="text"/>
1.4 Employed at the Time of Arrest 0 = Yes, Full-time 1 = Yes, Part-time 2 = Not employed	<input type="text"/>	<input type="text"/>
1.5 Residential Stability 0 = Lived at Current Residence Past Six Months 1 = Not Lived at Same Residence	<input type="text"/>	<input type="text"/>
1.6 Illegal Drug Use during Past Six Months 0 = No 1 = Yes	<input type="text"/>	<input type="text"/>
1.7 Severe Drug Use Problem 0 = No 1 = Yes	<input type="text"/>	<input type="text"/>
<b>Total Score:</b>	<input type="text"/>	

<b>Scores</b>	<b>Rating</b>	<b>% of Failures</b>	<b>% of Failure to Appear</b>	<b>% of New Arrest</b>
0-2	Low	5%	5%	0%
3-5	Moderate	18%	12%	7%
6+	High	29%	15%	17%

**Other Areas of Concern. Check all that Apply:**

- Low Intelligence\*
- Physical Handicap
- Reading and Writing Limitations\*
- Mental Health Issues\*
- No Desire to Change/Participate in Programs\*
- Transportation
- Child Care
- Language
- Ethnicity
- Cultural Barriers
- History of Abuse/Neglect
- Interpersonal Anxiety
- Other \_\_\_\_\_

\*If these items are checked it is strongly recommended that further assessment be conducted to determine level or severity.

## Harris County Pretrial Services – Risk Assessment & Recommendation

Defendant's Name: \_\_\_\_\_ Def SPN: \_\_\_\_\_

Interview# \_\_\_\_\_ Classification: \_\_\_\_\_

Assessed By (SPN & Initials): \_\_\_\_\_ Assessed Date/Time: \_\_\_\_\_

Court: \_\_\_\_\_ Charge: \_\_\_\_\_ Bond Amount: \_\_\_\_\_

Court \_\_\_\_\_ Charge: \_\_\_\_\_ Bond Amount: \_\_\_\_\_

### I. Risk Assessment – Circle All that Are True

Criminal Risk Items	Pts	Background Risk Items	Pts
1. The current charge is for burglary, robbery, weapons, other property crime (except theft or fraud), or man/del CS	<b>1</b>	10. Defendant is male	<b>1</b>
2. Def is on probation	<b>1</b>	11. Def does not have a HS diploma, or, earned a GED	<b>1</b>
3. Def is on parole	<b>1</b>	12. Def does not have a phone in residence	<b>1</b>
4. Def has only one prior misd. conviction OR	<b>1</b>	13. Def lives with someone other than spouse, children, or self	<b>1</b>
5. Def has two or more prior misd. convictions	<b>2</b>	14. Def does not own an automobile	<b>1</b>
6. Def has only one prior felony conviction OR	<b>1</b>	15. Def is not employed or attending school full time, and is not retired, disabled, or a homemaker	<b>1</b>
7. Def has two or more prior felony convictions	<b>2</b>	16. Def is under 21 years old and has a prior juvenile adjudication	<b>2</b>
8. Def has one or more verified FTA's	<b>1</b>	17. Def is under age 30 (skip if 16 used)	<b>1</b>
9. Def has a hold	<b>1</b>	<b>Risk Score (add items 1-17)</b>	

Low = 3 points or less

Low Moderate = 4-5 points

Moderate = 6-7 points

High = 8+ points

### II. If risk level needs to change, indicate override reason(s)

Mitigating Risk Factors	Aggravating Risk Factors
<input type="checkbox"/> Stable employment <input type="checkbox"/> Satisfactory family controls and support <input type="checkbox"/> Previous success on pretrial release <input type="checkbox"/> Age <input type="checkbox"/> Medical impairment/disabled <input type="checkbox"/> Age of prior convictions and arrests	<input type="checkbox"/> Gang member <input type="checkbox"/> Criminal record more serious than the risk score reflects <input type="checkbox"/> Active hold <input type="checkbox"/> Significant, untreated mental health problem <input type="checkbox"/> On probation, parole, or bond at time of current arrest <input type="checkbox"/> Unverifiable information

### III. Final Risk Level

Low     
  Low Moderate     
  Moderate     
  High     
  Refused Interview

### IV. Recommendation

- Release on a personal bond, standard conditions
- Release on a personal bond, additional conditions
- No Recommendation
- Detain

No Personal Bond Recommendation Reason: \_\_\_\_\_

Recommendation Date: \_\_\_\_\_ By: \_\_\_\_\_





## APPENDIX B

# TARRANT COUNTY PRETRIAL SERVICES STANDARDS





# TARRANT COUNTY PRETRIAL SERVICES

TARRANT COUNTY CORRECTION CENTER

100 NORTH LAMAR STREET

FORT WORTH, TX 76196-0218

(817) 884-1465 FAX (817) 884-3348

*Michelle R. Brown, Director*

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## **MISSION STATEMENT:**

To ensure a professional Criminal Justice service to the Tarrant County communities by obtaining accurate and thorough Pretrial release information for the County Courts. Additionally, to provide a fair process that impacts the defendant's personal liberty with community safety always the priority.

## **OBJECTIVE**

The primary objective of the Tarrant County Pretrial Services Agency is to gather thorough and accurate information on all defendants targeted by the guidelines established by the District and Criminal Court Judges of Tarrant County, who meet the criteria for release on personal bond. Although the information is primarily used to determine a defendant's eligibility for release on personal bond, it may also be used in other decisions relevant to a defendant's case. As many of these decisions are made relying solely on the information provided by Pretrial Services, accuracy and thoroughness are critical factors. The information must be gathered and presented in an unbiased, professional manner to sustain the judiciary's confidence in the Agency. At no time should Pretrial Services be viewed as an advocate for the release of defendants. Pretrial release information is valuable only when obtained and substantiated in an exhaustive and precise manner. The quality of the information gathered reflects on the Agency as a whole, as well as the professionalism of each individual employee. More importantly, the information may have a direct impact on both the defendant's liberty and the community's safety.

## **HISTORY AND AUTHORITY**

The Tarrant County *PreTrial Release Program* was created in 1979 by Tarrant County Commissioners Court, with grant funds received from the Criminal Justice Division of the Texas Governor's Office. *PreTrial Release* operated as an independent county department until September 1992, functioning under the day to day operational oversight of the Criminal Judges for Tarrant County, with budgetary control maintained by Commissioners Court.

In October 1992, Commissioners Court became responsible for the departmental budget and daily operations. The Commissioners Court appointed the County Administrator's Office to provide direct supervision and management of the department. In October of 2001, with the approval of the Tarrant County Commissioners' Court, the *PreTrial Release Program* underwent a name change to Tarrant County Pretrial Services.

Tarrant County Pretrial Services was created to fulfill these basic functions:

- To release from the sheriff's custody, as soon as possible, all arrested persons pending judicial action in local courts, who meet the agency's requirements and who have the

characteristics which indicate they will appear in court, as directed, while their case is being adjudicated.

- To reduce pretrial detention costs and to alleviate crowded jail situations.
- To inspire confidence in the criminal justice system by allowing deserving defendants with community ties to return to their social, cultural and economic environments.

The establishment of Pretrial Services as a County department, as well as the development of many of the procedural aspects of the Program, is based on criminal laws in Texas that are relevant to personal bonds. Article 17.42 of the Texas Code of Criminal Procedure authorizes a magistrate to grant personal bonds and under what conditions, as well as what must be stated on the bond itself. Article 17.01 and 17.03 of the Texas Code of Criminal Procedure defines a personal bond, provides information regarding release on personal bond as well as requisites of a personal bond.

### **STRUCTURE/ORGANIZATION**

Pretrial Services is currently under the direct supervision and authority of the Administrator's Office. The Criminal Justice Manager from the Administrator's Office oversees the administrative and operational functions of the Agency. The Pretrial Services Director is responsible for the daily operational processes of Pretrial Services insuring that efficient and quality services are provided by the Agency. Other Pretrial Services personnel include: two (2) Supervisors; nine (9) Pretrial Release Officers; two (2) Office Clerks and one (1) Secretary/Bookkeeper.

The Pretrial Services office is located in downtown Fort Worth in the Tarrant County Corrections Center at 100 North Lamar Street. In order to "screen" and interview defendants as soon after they are booked in as possible, Pretrial Services staffs a desk in the Book-In Section of the Tarrant County Jail, as well as the Arlington City Jail. Staff are also on hand to screen and interview Fort Worth arrestees at the 350 Belknap Facility in downtown Fort Worth. In addition, mechanisms are in place to interview and release eligible defendants from other Tarrant County municipalities via telephone and/or fax interview/release policies and procedures.

The Pretrial Services Agency maintains staff coverage six (6) days a week, from 6:00 AM to 7:00 PM on Monday, 6:00 AM to 11:30 PM Tuesday thru Thursday, from 6:00 AM to 10:00 PM on Friday, and 8:00 AM to 5:00 PM on Saturday. The office is closed on Sundays and official county holidays.

### **CRITERIA FOR RELEASE:**

Pretrial Services assists in the elimination of overcrowding in the county and City jails by allowing qualified defendants an opportunity to be released on personal bond while pending trial. In considering an individual for release, this agency is concerned with two (2) basic factors: *1) whether the person will appear for all scheduled court settings and 2) whether the person poses a serious threat to the safety of the community if released on bond.*

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The guidelines or policies used in determining a defendant's eligibility for release on personal bond as well as the "Exclusion List" were established for the Pretrial Services Agency by the District and Criminal Court Judges of Tarrant County. The Policy is reviewed annually and revisions are made as needed.

The most recent revision of the Pretrial Services Release Policy follows:

Pretrial Services Release Policy

The following Release Policy is adopted by the Judges hearing Criminal Cases in Tarrant County, Texas:

The Pretrial Services Agency may interview and consider all defendants who are eligible and qualified for release on personal bond. Defendants in order to be eligible for consideration for release on personal bond must reside within a 50 mile radius of the Tarrant County Courthouse, in addition to having strong ties to the community and providing three references to the Pretrial Services Agency for verification of any required information. All Defendants also are subject to the offense exclusions hereinafter set out. Pretrial Services must verify that all participants in the Pretrial Services program are fully qualified and eligible for release on a personal bond before recommendation of such bond. *However, the Judge having jurisdiction of a particular defendant or case which may be indicted into or pre-assigned to a Court, may order the release of such person regardless of the offense.*

Pretrial Services may not interview or consider any defendant who is subject to any of the following situations **without the approval of the Judge of the Court.**

- Persons who are charged with Article 42.12, Sec. 3 (g) (a) (1) or (2) offenses.
- Persons who are charged with any First Degree Felony.
- Persons who have a final felony conviction with a sentence to IDTDCJ.
- Persons who have been on probation for a felony within five years prior to the date of the new offense.
- Persons who are known or admitted members of any criminal street gang as defined in Section 71.01 (d) Texas Penal Code.
- Persons who are charged with an offense while on bond for another offense or while on probation for another offense.
- Persons who have a bond amount exceeding \$10,000.
- Persons who are charged with a felony offense who have been previously convicted of the same felony offense.
- Persons who have two or more cases pending filed from the same criminal episode.

In addition, Pretrial Services may not interview or consider any Defendant who is charged with any offense hereafter set out on the attached exclusions list without the approval of the Judge of the Court. Pretrial Services shall distribute this policy to all police agencies in Tarrant County for observance.

**EXCLUSIONS****Penal Code and Traffic Offenses**

Abuse of a Corpse	42.08
Abuse of Official Capacity	39.02
Aggravated Assault	22.02
Aggravated Kidnapping	20.04
Aggravated Perjury	37.03
Aggravated Robbery	29.03
Aggravated Sexual Assault	22.021
Agreement to Abduct from Custody	25.031
Arson	28.02
Assault on Elderly or Disabled	22.01
Assault of Family Member (2nd or subsequent offense)	22.01
Assault on Public Servant	22.01
Bail Jumping/Failure to Appear	38.10
Boating while Intoxicated (2nd or subsequent offense)	49.09
Bribery - Public Official	36.02
Burglary of Habitation (with intent other than theft)	30.02
Capital Murder	19.03
Child Pornography	43.26
Civil Rights Violation - Prisoners	39.04
Coercion of Public Servant/Voter	36.03
Criminal Negligent Homicide	19.05
Criminal Solicitation (Capital Murder/1st Degree Felony)	15.03
Criminal Solicitation (Minor / 3g offenses)	15.031
Deadly Weapon in Penal Institution	46.10
Driving while Intoxicated (4th or subsequent offense)	49.09
Employment Harmful to Children	43.251
Engaging in Organized Criminal Activity	71.02
Enticing a Child	25.04
Escape	38.06 38.07
Evading Arrest/Detention (Any Felony or 2nd or subsequent Misdemeanor Offense)	38.04
False Imprisonment	20.02
Flying while Intoxicated (2nd or subsequent offense)	49.09
Failure to Stop and Render Aid	6701d
Harboring Runaway Child	25.06
Harassment	42.07
Hindering Apprehension/Prosecution (Any Felony or 2nd or subsequent Misd Offense)	38.04
Implements for Escape	38.09
Incest	25.02
Indecency with a Child	21.11
Injury to a Child/Elderly/Disabled	22.04
Interference with Railroad Property (Shooting or Bodily Injury)	28.07
Intoxication Assault	49.07
Intoxication Manslaughter	49.08
Kidnapping	20.03
Manslaughter	19.04
Murder	19.02
Obscenity (Sale/Display/Hire Minor)	43.24
Official Oppression	39.03
Perjury	37.02
Possession of Components of Explosives	46.09

Possession of Prohibited Weapon (Felony)				46.05
Prohibited Controlled Substance in Correctional Facility				38.11
Prohibited Sexual Conduct				25.02
Prostitution	43.02	43.03	43.04	43.05
Resisting Arrest (Any Felony or 2nd or subsequent Misdemeanor Offense)				38.03
Retaliation/Obstruction				36.06
Robbery				29.02
Riot				42.02
Sale/Purchase of Child				25.08
Sale/Purchase of Human Organs				48.02
Sexual Assault				22.011
Sexual Performance by a Child				43.25
Silent/Abusive 911 Calls				32.061
Stalking				42.071
Taking Weapon from Peace Officer				38.14
Tampering with Witness				36.05
Tampering/Fabricating Physical Evidence				37.09
Terroristic Threat				22.07
Theft or Theft of Services (Any amount under \$100,000, 2nd of subsequent offense)	31.04			31.03
Theft \$100,000 - \$200,000				31.03
Theft \$200,000 or more				31.03
Theft (Human Corpse or Grave)				31.03
Theft by Public Servant				31.03
Theft of Services \$100,000 - \$200,000				31.04
Theft of Services \$200,000 or more				31.04
Unauthorized Absence from Community Correction Facility				38.113
Violation of Protective Order				25.07

Drug Offenses - Health and Safety Code

Deliver/Manufacture 4 - 2000 grams PG-1	481.112
Possession 200 - 400 grams PG-1	481.115
Deliver/Manufacture 4 - 200 grams PG-2	481.113
Possession 400 grams or more PG-2	481.116
Deliver/Manufacture 200 - 400 grams PG-3	481.114
Possession 400 grams or more PG-3	481.117
Deliver/Manufacture 200 grams or more PG-4	481.114
Possession 400 grams or more PG-4	481.118
Deliver 50 lbs. or more Marihuana	481.120
Possession 2,000 lbs. or more Marihuana	481.121
Delivery to Minor Any Amount	481.125
Illegal Expenditure/Investment	481.126
Prohibited Controlled Substance in Correctional Facility	38.11PC

*Updated: 2/19/2008 per minutes of the District and Statutory  
County Court Judges trying Criminal Cases.*





## APPENDIX C

# CLASSIFICATION CRITERIA FOR COUNTIES USING PRETRIAL RISK ASSESSMENT



VALIDATED PERSONAL BOND-ORIENTED SYSTEMS:				<ul style="list-style-type: none"> <li>✓ Validated risk assessment instrument</li> <li>✓ Significant number of defendants are assessed</li> <li>✓ Release on PR bond usually occurs within 48 hours of arrest</li> <li>✓ Release on PR bond with no conditions is available</li> </ul>					
County 2015 Population Estimates	October 2016 Jail Pop. (% Pretrial)*	Risk Assessment Implemented by:	% Defendants Assessed M = Misdemeanor F = Felony	% Assessed Defendants Recommended for Personal Bond	Personal Bond Requirements		Hours from Arrest to Release on PR Bond	Estimated Active Caseload	
					Without Conditions	With Conditions		PB: Personal Bond	SB: Surety Bond
<b>Bexar (1,897,753)</b>	3,723 (57.6%)	CSCD	M: 80-100% F: 80-100%	80-100%	Yes	Yes	24 hrs. or less	2,500	2,500
<b>Ector (159,436)</b>	779 (67.5%)	County	M: < 20% F: 40-60%	40-60%	Yes	Yes	24 hrs. or less	45	50
<b>El Paso (835,593)</b>	1,371 (67.5%)	County	M: 60-80% F: 60-80%	None	Provide risk scores to judges without recommendation		24 hrs. or less	Split Personal and Surety Bonds (2,800)	
<b>Harris (4,538,028)</b>	9,431 (67.0%)	County	M: 60-80% F: 60-80%	40-60%	Yes	Yes	24-48 hrs.	2,200	3,000
<b>Midland (161,077)</b>	428 (79.0%)	County	M: 80-100% F: 60-80%	40-60%	Yes	Yes	24 hrs. or less	2,000	10
<b>Travis (1,176,558)</b>	2,569 (73.2%)	CSCD	M: 60-80% F: 60-80%	60-80%	Yes	Yes	24-48 hrs.	5,500	550

UNVALIDATED PERSONAL BOND-ORIENTED SYSTEMS:				<ul style="list-style-type: none"> <li>X Unvalidated risk assessment instrument</li> <li>✓ Significant number of defendants are assessed</li> <li>✓ Release on PR bond usually occurs within 48 hours of arrest</li> <li>✓ Release on PR bond with no conditions is available</li> </ul>					
County 2015 Population Estimates	October 2016 Jail Population (% Pretrial)*	Personal Bond Program Operated by:	% Defendants Assessed M = Misdemeanor F = Felony	% Assessed Defendants Recommended for Personal Bond	Personal Bond Requirements		Hours from Arrest to Release on PR Bond	Types of Bond Supervision Provided (Est. Active Caseload)	
					Without Conditions	With Conditions		PB: Personal Bond	SB: Surety Bond
<b>Bell (334,941)</b>	696 (67.0%)	County	M: 80-100% F: 60-80%	40-60%	Yes	Yes	24 hrs. or less	4,500	700
FINANCIAL BOND-ORIENTED SYSTEMS				<ul style="list-style-type: none"> <li>X Unvalidated risk assessment instrument</li> <li>X Significant number of defendants are assessed</li> <li>X Release on PR bond usually occurs more than 48 hours after arrest</li> <li>X Release on PR bond without conditions is rare</li> </ul>					
County 2015 Population Estimates	October 2016 Jail Population (% Pretrial)*	Personal Bond Program Operated by:	% Defendants Assessed M = Misdemeanor F = Felony	% Assessed Defendants Recommended for Personal Bond	Personal Bond Requirements		Hours from Arrest to Release on PR Bond	Types of Bond Supervision Provided (Est. Active Caseload)	
					Without Conditions	With Conditions		PB: Personal Bond	SB: Surety Bond
<b>Bowie (93,389)</b>	347 (71.2%)	CSCD	M: 80-100% F: 20-40%	80-100%	No	Yes	24-48 hrs.	20	30
<b>Brown (37,896)</b>	170 (45.3%)	County	M: 60-80% F: 60-80%	80-100%	Yes	No	More than 72 hrs.	95	

FINANCIAL BOND-ORIENTED SYSTEMS (continued)									
County 2015 Population Estimates	October 2016 Jail Population (% Pretrial)*	Personal Bond Program Operated by:	% Defendants Assessed M = Misdemeanor F = Felony	% Assessed Defendants Recommended for Personal Bond	Personal Bond Requirements		Hours from Arrest to Release on PR Bond	Types of Bond Supervision Provided  (Est. Active Caseload)	
					Without Conditions	With Conditions		PB: Personal Bond	SB: Surety Bond
<b>Caldwell (40,522)</b>	124 (79.8%)	CSCD	Don't know	Don't know	No	Yes	48-72 hrs.	74	151
<b>Callahan (13,557)</b>	23 (91.3%)	CSCD	M: 80-100% F: 80-100%	Present interview results to judge without recommendation	No	Yes	24-48 hrs.	3	0
<b>Cameron (422,156)</b>	1,062 (68.6%)	CSCD	M: 20-40% F: < 20%	80-100%	Yes	Yes	24 hrs. or less	Don't Know	Don't Know
<b>Coleman (8,338)</b>	17 (52.9%)	CSCD	M: 80-100% F: 80-100%	Present interview results to judge without recommendation	No	Yes	24-48 hrs.	5	0
<b>Comal (129,048)</b>	307 (71.3%)	CSCD	Don't know	Don't know	No	Yes	48-72 hrs.	74	151
<b>Harrison (66,746)</b>	207 (72.9%)	CSCD	M: < 20% F: < 20%	Don't know	No	No	48-72 hrs.	11	30
<b>Hays (194,739)</b>	407 (78.9%)	CSCD	Don't know	Don't know	No	Yes	48-72 hrs.	74	151
<b>Liberty (79,654)</b>	227 (68.3%)	County	M: < 20% F: < 20%	20-40%	No	Yes	48-72 hrs.	110	30
<b>Lubbock (299,453)</b>	1,116 (70.2%)	CSCD	M: 20-40% F: 20-40%	40-60%	No	Yes	More than 72 hrs.	132	208
<b>Medina (48,417)</b>	106 (83.0%)	County	M: 20-40% F: < 20%	60-80%	No	Yes	More than 72 hrs.	175	0

FINANCIAL BOND-ORIENTED SYSTEMS (continued)									
County 2015 Population Estimates	October 2016 Jail Population (% Pretrial)*	Personal Bond Program Operated by:	% Defendants Assessed M = Misdemeanor F = Felony	% Assessed Defendants Recommended for Personal Bond	Personal Bond Requirements		Hours from Arrest to Release on PR Bond	Types of Bond Supervision Provided  (Est. Active Caseload)	
					Without Conditions	With Conditions		PB: Personal Bond	SB: Surety Bond
<b>Mills (4,900)</b>	9 (44.4%)	County	M: 60-80% F: 60-80%	80-100%	Yes	Yes	More than 72 hrs.	9	
<b>Williamson (508,514)</b>	724 (70.3%)	CSCD	M: None F: 40-60%	None	No	Yes	Don't know	130	30
<b>Tarrant (1,982,498)</b>	3,419 (57.9%)	County	M: < 20% F: < 20%	80-100%	Yes	Yes	24 hrs. or less	2,100	140
<b>Taylor (136,051)</b>	573 (60.2%)	CSCD	M: 80-100% F: 80-100%	Present interview results to judge without recommendation	No	Yes	24-48 hrs.	90	0
<b>Webb (269,721)</b>	477 (66.7%)	County	M: < 20% F: < 20%	80-100%	No	Yes	24 hrs. or less	300	0
<b>Wharton (41,486)</b>	120 (78.3%)	CSCD	M: < 20% F: < 20%	Don't know	Don't Know	Yes	Don't know	254	0

\* Pretrial jail population numbers were taken from the Texas Commission on Jail Standards' October 1, 2016 population report. Count includes inmates housed locally and elsewhere.



