

# **[2019 Session] Fix the Bail System: Stop Punishing Poverty and Allow Safe Pretrial Release for Eligible Individuals**

## **Policy Background**

Bail is not intended to be a punishment; its intended purpose is to ensure that people appear for their court date. But in communities across Texas, people who are legally innocent are being held in jail – sometimes for months, risking job loss, eviction, and custody of their children – because they cannot afford to post bail; taxpayers foot the bill for their incarceration, their food, and their medical care. In fact, 63 percent of people in Texas county jails today are awaiting trial,<sup>1</sup> at a collective cost to taxpayers of \$2.6 million per day.<sup>2</sup> Meanwhile, wealthy people can buy their freedom and are simply released. The Harris County and Dallas County money bail systems have been challenged in court and found unconstitutional precisely because of this unequal, wealth-based detention.

Kentucky shifted away from a money bail system and instead implemented a validated risk assessment – an evidence-based tool that helps judges throughout the state make pretrial release decisions, based on a person’s potential risk of flight or reoffending. Within the first six months, Kentucky saw a 15 percent statewide decrease in pretrial crime, stable court appearance rates, and significant reductions in the proportion of the county jail population detained while awaiting trial.<sup>3</sup> Similarly, since money bail was almost entirely eliminated in New Jersey in January 2017, the pretrial population has decreased by nearly 40 percent, and both violent and nonviolent crime have fallen by double digits.<sup>4</sup>

## **Proposed Solution**

(1) Implement a presumption of pretrial release on personal bond, but require all defendants to be assessed with a validated risk assessment to restore fairness, preserve judicial discretion, and keep high-risk individuals behind bars. (2) Require data collection on individuals released vs. detained pretrial, including data on the underlying offense and race/ethnicity. (3) Provide counties with adequate funding for pretrial

supervision to promote accountability and ensure more people can access community-based treatment and services that address the real root causes of crime.

## Relevant Bills

- **Bill Number:** [HB 1323](#) [Murr, Charles “Doc” Anderson, Coleman, Kacal]  
**Bill Caption:** Relating to bail proceedings and related duties of a magistrate in a criminal case.  
**House Hearing Notice:** [Criminal Jurisprudence](#), April 8, 2019  
**House Hearing Video:** [Criminal Jurisprudence](#), 4/8/19
- **Bill Number:** [SB 628](#) [Whitmire]  
**Bill Caption:** Relating to bail proceedings and related duties of a magistrate in a criminal case.

## Other Bills Related to Bail and Bond

- **Bill Number:** [HB 1955](#) [Dutton]  
**Bill Caption:** Relating to the eligibility of certain defendants for release on personal bond.  
**House Hearing Notice:** [Criminal Jurisprudence](#), April 25, 2019  
**House Hearing Video:** [Criminal Jurisprudence](#), 4/25/19

## Other Materials

- TCJE Blog Posts: [Must Read: Bail System Promotes Profit, Not Justice](#) [February 2018]; [Texas Gets National Attention—For Failing on Pretrial](#) [November 2017]
- TCJE Fact Sheet: [Responses to Five Claims About Personal Bonds and Pretrial Reform](#) [January 2017]

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<sup>1</sup> Texas Commission on Jail Standards (TCJS), [Texas County Jail Population](#), November 1, 2018. The total pretrial population is 42,772 people (Felons, Misdemeanant, and State Jail Felon pretrial categories).

<sup>2</sup> TCJS, [Immigration Detainer Report](#), 10/1/2018. Calculation = (Total Cost / # of Inmate Days) \* 42,772 total pretrial population.

<sup>3</sup> Laura and John Arnold Foundation, *Results from the First Six Months of the Public Safety Assessment – Court™ in Kentucky*, July 2014.

<sup>4</sup> Editorial: “Has bail reform been a success? Check the crime numbers, then decide,” *New Jersey Star-Ledger*, December 4, 2018.