

# Bail In Texas

**A Brief for State and  
Local Policymakers**





**“Twenty-five years ago, a third of the jail population was awaiting trial. Now the percentage is three-fourths. Most of those detained are non-violent, unlikely to re-offend, and posing no risk of flight. Many are held because they’re too poor to make bail. Though presumed innocent and no risk to public safety, they remain in jail, losing jobs and families, and emerge more likely to re-offend. The toll on them personally also burdens communities. And on top of that, taxpayers must foot the bill—a staggering \$1 billion per year to jail those who should be released. Besides the costs, detaining someone solely because he’s poor is against the law. It violates fundamental constitutional rights. In 21st-century Texas, it ought to be unthinkable.”**

— Nathan Hecht, former chief justice of the Supreme Court of Texas, in 2019<sup>1</sup>

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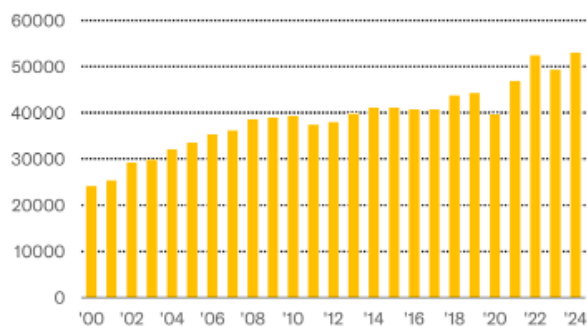
## *A brief for state and local policymakers*

### Introduction

Texas has a two-tiered system of justice that is neither fair nor safe. In the typical case, if you are wealthy, you go free before your trial and enjoy the presumption of innocence. If you aren't, you remain in jail.

The bail system in Texas determines whether an accused person in a criminal proceeding will be released or jailed before and during trial. This system should minimize unnecessary pretrial detention while maximizing public safety and court appearance through a fair and rational pretrial release and detention process. But liberty before trial usually hinges on access to financial resources rather than legitimate assessments about safety or flight. Texas county jails detain more than 53,000 people on any given day **who have not been found guilty** of a crime, representing more than 70% of the overall jail population.<sup>2</sup> These individuals are presumptively innocent, **waiting for trial behind bars at a cost to Texas taxpayers of about \$1.2 billion annually.**<sup>3</sup> The vast majority remain in jail simply because they cannot afford bail: an amount set by the court that a person must pay to be released. Between 2000 and 2024, this pretrial population

Pretrial Population in Texas Jails by Year  
2000-2024



Source: Texas Commission on Jail Standards Population Reports

grew 119%, from 24,168 people to 53,048, significantly outpacing population growth.<sup>4</sup>

This brief provides a high-level overview of Texas' present bail system. It describes how the pretrial process functions and how a typical case proceeds through our criminal legal system. Additionally, the brief explains how the current approach to pretrial decision-making fails to deliver the safety and justice that Texans deserve, at great human and financial cost.

Finally, the brief ends with seven recommended improvements to pretrial processes for state and local policymakers to adopt, including to: 1) establish a presumption of release, 2) guarantee lawyers at initial appearances, 3) use proven tools to prevent missed court dates, 4) ensure pretrial detention is used only as a last resort in extreme circumstances, 5) limit arrests for fine-only offenses, 6) expand use of citations instead of arrest, and 7) improve transparency in pretrial processes.

**“I felt like a nobody... People around me are getting bonded out for more bond, and I’m like, I’m poor, so I’m going to lose all of this. I’m important, too. I should be able to get out, too.”**

— Angela Collier, Midway, Texas  
resident to the Texas Tribune<sup>5</sup>

### Background

The presumption of innocence and the fundamental right to pretrial liberty are foundational principles of American criminal law and basic components of a fair trial.<sup>6</sup> Today, our pretrial system flips the presumption of innocence on its head,

routinely taking away a person’s liberty before giving them an opportunity to defend themselves or requiring the government to prove its case.

Originally in America, the purpose of bail was to serve as an incentive to return to court when a person is arrested, released, and their case proceeds. Requiring an upfront payment in exchange for pretrial freedom was unheard of at the founding.<sup>7</sup> Bail relied on a system where family members or friends vouched for accused persons, promising they would show up in court. But our current money bail system deviated from this original purpose. Over more than two centuries, the bail system mutated into one where people throughout the country are required to pay a monetary amount to secure their freedom.<sup>8</sup>

The U.S. Supreme Court has upheld pretrial detention in narrow circumstances, including extreme situations with extensive procedural safeguards to ensure the government’s interest truly outweighs a person’s liberty interest. In *United States v. Salerno*, the Supreme Court held that, “In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.”<sup>9</sup>

Pretrial detention in Texas is not carefully limited, however. Texas courts routinely require money bail for release for almost everyone, including for people accused of minor offenses like marijuana possession.<sup>10</sup> In the typical case, an accused person gains liberty only after making a monetary payment.

As reliance on money bail in Texas increased, so too did pretrial detention.<sup>11</sup> **In the past 25 years, the pretrial population in Texas jails has risen from just over 38% of the jailed population to more than 70%.** More than seven in 10 of the roughly 72,000 people confined in our county jails have not been convicted of a crime and are simply unable to pay their bond.<sup>12</sup>

The theory behind money bail is that the bail amount will be sufficient to assure a person’s appearance in court. There is persuasive evidence that this theory is wrong. There is “no evidence that money bail increases the probability of appearance” compared to nonfinancial conditions of release.<sup>13</sup> **Simple, low-cost tools like automated phone calls and text message reminders have**

**been shown to dramatically boost court appearance rates without the harms caused by money bail.**<sup>14</sup>

Texas’ bail system should minimize unnecessary pretrial detention while maximizing public safety and court appearance, but it is failing to meet these obligations. The harms of money bail and pretrial detention are numerous. Policymakers in Texas must take steps to improve our pretrial system so that bail decisions are smart, safe, and fair.

**“We’re on fixed income. I’m handicapped, and he has a disability. We had to borrow, and we had to put a lot of money against our house to get him out of jail. My first thought — I didn’t know what do to. That first night was horrifying. Because we are always together, and for us to be apart — that was really hard for me. We’re seventy years old. We didn’t imagine this would go on. We go to church. We think about our business and stay in our house and don’t bother anybody.”**

— Pearline Harper, resident of Dallas and a leader with Texas Organizing Project, talking about her husband Lester

## The General Pretrial Process in Texas

If you are arrested in Texas, you will typically be transported to a local jail and go through booking. During booking, your wallet, keys, phone, and other personal items will be taken, and you will be fingerprinted and photographed. Within 48 hours, you will be taken to an initial court appearance in front of a judge known as a magistrate.<sup>15</sup> In many places in Texas, the magistrate is a judge appointed to oversee these initial proceedings by locally elected criminal court judges.

During the initial appearance, the magistrate reviews the allegations against you to decide whether

there is sufficient evidence to believe you committed the crime you are accused of. This is the probable cause determination. If the magistrate judge determines that probable cause does not exist, you must be released because there is a lack of sufficient grounds to hold you. If probable cause does exist, the magistrate tells you about the allegations in your case, informs you of your rights, and describes how to get a lawyer if you cannot afford one. Most counties in Texas do not provide a lawyer to help you during magistration.

The magistrate then makes the consequential decision to either grant or deny bail. People in Texas are guaranteed bail – a pathway for release with conditions – except for in certain circumstances. If you are denied bail, it means you are denied release altogether.<sup>16</sup>

### How Bail Is Set

Once a magistrate has determined that you will be granted bail, they have broad discretion in setting bail conditions.<sup>17</sup> Conditions may be non-financial, requiring things like GPS monitoring or stay-away orders. But in nearly 90% of cases where bail is set in Texas, the magistrate requires the condition of money bail.<sup>18</sup> “Money bail” is the shorthand way to describe the bail process that requires up-front monetary payment through a cash or surety bond prior to release. A money

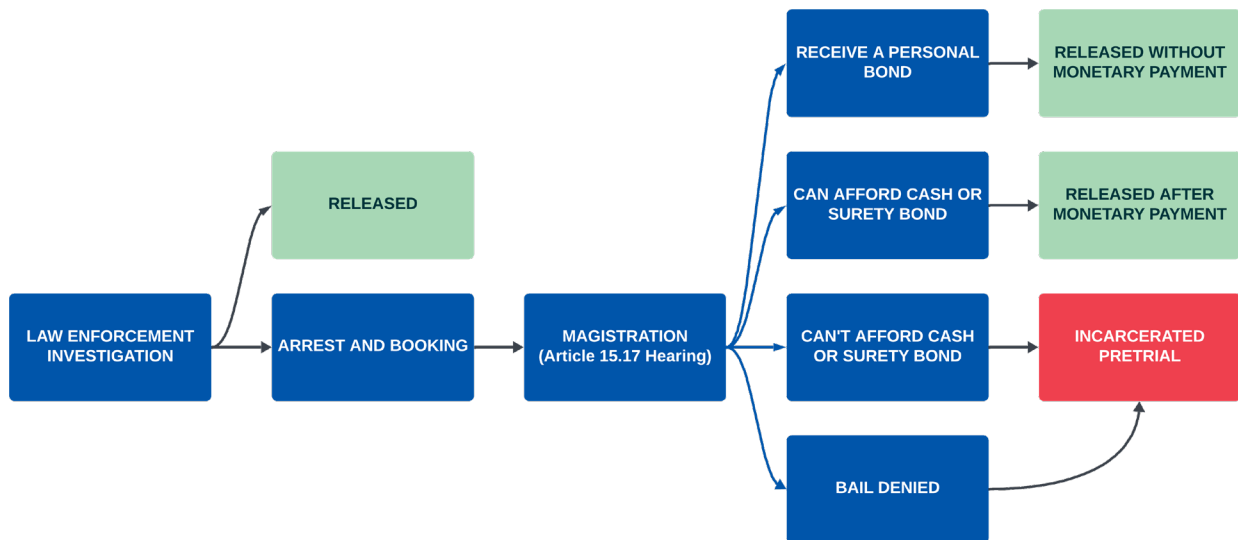
bail condition means you must post an amount of money for your freedom. Some people are granted a personal bond which, by contrast, allows you to be released without an up-front payment. With a personal bond, you must promise to pay the court if you fail to appear as required.

If you can afford to post money bail directly to the court, you will get your money returned at the end of your case, regardless of its outcome. But if you cannot afford the bail amount, you face a grim choice: remain in jail while awaiting resolution of your case, sometimes for months or years; plead guilty to avoid prolonged detention, even if you are innocent; or enter an exploitative financial arrangement with a commercial bail company to post the bail.

### How Commercial Bail Companies Work

As independent business entities, commercial bail companies are free to decide who they will accept as customers and who they will leave in jail while their case winds through the legal system. If they accept you as a customer, they will charge a non-refundable fee. This fee is typically around 10% of the full bail amount. In exchange, the commercial bail company guarantees your full bail amount to the court. If you or your family and friends cannot afford this fee, you may enter an installment plan that can trap you in a cycle of debt and fees related

## BASIC PRETRIAL PROCESS FOR MOST CASES IN TEXAS



to payments. Even if your charges are dropped or you are found innocent, the money you paid the bond company will not be returned.

If you cannot find a way to pay the bail amount to the court or through a commercial bail company, you will usually stay in jail until your case is resolved. In effect, unaffordable money bail is a pretrial detention order.

**“I sat in jail for almost a year on a \$30,000 bond for an enhanced misdemeanor, for a crime I didn’t commit. The judge found me not guilty and let me go. I was in jail trying to be a mom, trying to coach my daughter. I have never in my life been a threat to society, ever. People sitting in jail pretrial doesn’t equate to a safer community. My kids were not safer without me.”**

— Laquita Garcia, 54, San Antonio resident and Statewide Right2Justice Policy Coordinator at Texas Organizing Project

## Texas’ Pretrial System Undermines Safety

Unnecessary pretrial detention makes Texas communities less safe. Multiple studies show that holding people in jail for any amount of time before trial is linked to increases in crime. In addition, wealth-based detention results in arbitrary release and detention decisions and often delegates decisions about release to commercial bail companies that are unconcerned about safety.

More than a decade ago, a groundbreaking study of pretrial detention in Kentucky drawing on more than 153,407 cases determined that “Detaining low- and moderate-risk defendants, even just for a few days, is strongly correlated with higher rates of new criminal activity both during the pretrial period and years after case disposition.” **As little as two days in detention was associated with**

**an increased likelihood of rearrest. The longer people were held, the more likely they were to be rearrested, even years after the case and regardless of whether the person was convicted.** Overall, people detained pretrial were “1.3 times more likely to recidivate compared to defendants who were released at some point pending trial.”<sup>19</sup>

A follow-up study by the same researchers drew from nearly 1.5 million cases in Kentucky. It confirmed findings that pretrial detention was consistently associated with increased odds of rearrest for new crimes. It further recommended that, “Jail time should generally be avoided during the pretrial phase... [as] jail is likely the most harmful option during the pretrial stage.”<sup>20</sup>

## Pretrial Detention And Money Bail Have Been Linked To More Crime In Texas

In Texas, a 2017 study of people charged with misdemeanors in Harris County found that “those detained pretrial are more likely to commit future crimes.”<sup>21</sup> The researchers concluded that pretrial detention “is associated with a 30% increase in new felony charges and a 20% increase in new misdemeanor charges, a finding consistent with other research suggesting that even short-term detention has criminogenic effects.” A Texas A&M study in 2017 found wealth-based release may create more public safety issues when compared to alternative pretrial release models. The researchers determined that Tarrant County’s pretrial system, which had relied almost exclusively on financial release and detention, **was associated with 20% more new offenses, 12% more violent offenses, and eight times as many offenses involving weapons as Travis County’s system that relied much more on assessments of risk.**<sup>22</sup>

Another large study of money bail in Philadelphia and Pittsburgh found that money bail was associated with a 6 to 9 percent increase in recidivism.<sup>23</sup>

## Money Bail Means Freedom For The Rich

Adding to these concerns, it is important to remember that Texas' current pretrial system leads to arbitrary release and detention. Similarly situated people are treated differently based solely on their relative wealth. Those who go free are released because they can purchase their liberty, not because they pose a lesser threat to community safety or of flight. This situation led Texas Supreme Court Chief Justice Nathan Hecht to observe, "Not only are people held who should be released, people are released who should be held."<sup>24</sup>

Finally, the business model of commercial bail companies compounds concerns about safety. Commercial bail companies are typically only held liable and owe a forfeiture payment if a client fails to appear in court as required. As the International Association of Chiefs of Police explains, "the bondsman's focus, from a purely business model, is on how much money will be made to profit the company versus broader concerns like public safety."<sup>25</sup> Outsourcing release and detention decisions to commercial bail companies is a poor substitute for meaningful case-by-case decisions by a judge about release, detention, and bail conditions.

## Texas' Pretrial System is Costly

Texas' current pretrial system unnecessarily burdens taxpayers, hurts our local economies, and tears apart individual lives, families, and communities. On any given day, more than 53,000 presumptively innocent people in Texas jails are awaiting trial.<sup>26</sup> **Housing a person in jail costs an average of \$62.41 per day, which means that Texas counties are spending roughly \$3.3 million a day, or \$1.2 billion a year, jailing individuals before they have been convicted of a crime.**<sup>27</sup>

Much of that money goes to jailing individuals who pose little risk to the community, who will not be convicted, or will ultimately have their cases dismissed. In fact, a majority of people in county

jails in the United States are pretrial and can be safely released.<sup>28</sup>

The costs of pretrial detention include more than local jail expenses. Even short jail stays lead people to lose their jobs, with one study showing 14% of people held just three days lose employment.<sup>29</sup> Those detained more than three days are more likely to report serious financial difficulty than those detained for shorter periods. They are more likely to experience issues with housing stability and less likely to be able to support dependent children.<sup>30</sup> Pretrial detention is associated with increases in poverty and decreases in employment, and "individuals lose an average of \$29,000 over the course of the working-age life cycle when detained in jail for just three days while awaiting the resolution of their criminal cases."<sup>31</sup> Even short periods of pretrial detention can trigger a cascade of harms, including tragic and preventable deaths. The risk of death, particularly by suicide, increases almost immediately upon jail admission.<sup>32</sup>

**"My 32 yr old son Taylor would still be alive were it not for the \$3,000 bond that held him hostage in Kaufman county jail after he was arrested during a severe mental health crisis in November of 2023. Taylor had cycled for decades through psych hospitals and jails but thanks to fierce advocates like Texas Jail Project, we had always managed to save him. But in the end, our grossly inept public mental health system along with a cruel pretrial detention system killed him within 6 days of his arrest."**

— Deborah Winters, mother of Jonathan Taylor Ngumbi

## Money Bail Disproportionately Harms Black Communities And Women

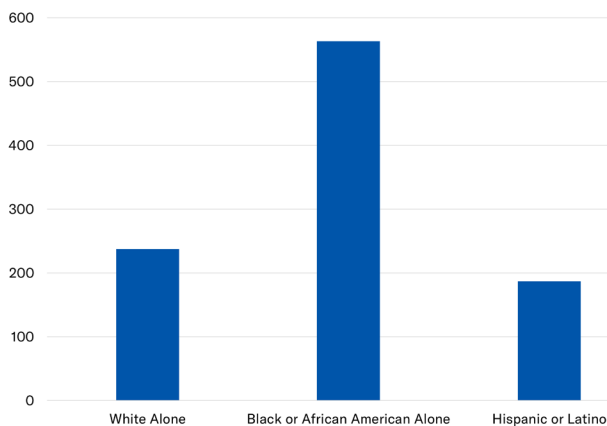
People of color and people who struggle to make ends meet disproportionately bear the harms of money bail and pretrial detention. In the past 50 years,

nearly every study on the impact of race in bail decisions has concluded that Black people are subjected to pretrial detention at a higher rate and are subjected to higher bail amounts than white arrestees with similar charges and criminal histories.<sup>33</sup> Black and Latinx people are more likely to have lower rates of nonfinancial release and higher rates of bail denial than white people.<sup>34</sup> Research shows that most people who are unable to afford bail fall within the poorest third of society.<sup>35</sup> Bail amounts are consistently higher for Black and brown defendants, even though they are less able to afford money bail.<sup>36</sup> In 2019, Black people in Texas constituted 11% of the state’s population, but 28% of the people in jail.<sup>37</sup>

In cases where individuals cannot afford bail, they or their families may have the option of paying commercial bail companies a nonrefundable fee of around 10%. This distributes the financial burden of money bail across families and communities. This wealth extraction is especially pronounced on Black communities.

Money bail is particularly burdensome to women and destabilizing to Texas families. Women are generally less able to afford money bail than men, and their incarceration more often results in a child losing their primary caregiver. Nearly eighty percent of women in jails are mothers, and most of them are single parents.<sup>38</sup> While women are less likely to be jailed overall, this may be changing: The number of women incarcerated in jails is growing at a rapid pace across the country, including in Texas. Rural counties are driving the increase.<sup>39</sup>

Texas Rate of Incarceration in Jails (per 100,000)



Source: Bureau of Justice Statistics, Census of Jails, 2019 and U.S. Census

**“In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.”**

— United States v. Salerno, 481 U.S. 739, 755, 107 S.Ct. 2095, 95 LEd.2d 697 (1987)

## Policy Recommendations

Texas needs a rational, balanced approach to pretrial detention and release. The legislative recommendations below aim to minimize unnecessary pretrial detention while maximizing public safety and court appearance through a fair pretrial release and detention process.

Rather than continuing to throw away money on long, unnecessary jail stays, these recommendations aim to identify people who can be safely released pretrial, limit the role of money in detention decisions, enhance transparency, and ensure that incarceration before a conviction is a last resort rather than the norm.

By reducing unnecessary jail stays, we can reinvest savings in more effective crime prevention strategies.

### Establish a Presumption of Release

State and local policymakers should establish a presumption of release without money bail to ensure jail is used as a last resort after the case is reviewed by a judge. This is a commonsense way to ensure Texans are only held in custody when it is in the interest of public safety. This reform does not guarantee anyone release before trial. It lets judges decide in each case whether the person is a flight risk or poses a threat to public safety.

### Guarantee Lawyers at Initial Appearances

When lawyers are present at magistration, judges can make better, more informed decisions. Research shows that when counsel is present, safety outcomes are maintained, pretrial release for those who pose little risk is increased, courts are more



efficient, and there can be overall cost savings.<sup>40</sup>

County policymakers could ensure that individuals have access to lawyers at magistrations on their own. The legislature could ensure access to lawyers at magistrations statewide by amending the Code of Criminal Procedure to ensure counsel at initial court appearances is provided at the request of the defendant. Alternatively, the legislature could propose an amendment to the state constitution establishing the general state constitutional right to counsel at bail setting.

## **Use Proven Tools to Prevent Missed Court Dates**

State and local policymakers should adopt best practices like text reminders and better-designed citations to improve pretrial supervision services. These tools have been shown to improve court efficiency and reduce unnecessary warrants stemming from failures to appear.<sup>41</sup> Effective pretrial tools promote fairness, efficiency, and improved outcomes within the criminal justice system. Texas' Office of Court Administration has developed a text reminder program that is free to all counties to offer to defendants in criminal cases. Local decision-makers should use OCA's system or their own, and state lawmakers should require the use of court text reminders and other effective pretrial tools.

## **Ensure Pretrial Detention Is Only Used as a Last Resort in Extreme Circumstances**

Unwarranted pretrial incarceration is costly and increases crime. It also breaks important promises in our Constitution and our laws about what justice is supposed to look like. The U.S. Constitution requires that in each case before locking someone up before trial, the government must prove that pretrial detention is necessary at a fair hearing. Furthermore, pretrial detention should only be allowed in extremely limited circumstances.<sup>42</sup> State and local policymakers must take steps to eliminate wealth-based detention while respecting the presumption of innocence and the fundamental right to pretrial freedom.

## **Limit Arrests for Fine-Only Offenses**

To minimize unnecessary pretrial detention, state and local policymakers should limit arrests for minor offenses requiring only a fine, such as traffic offenses. **Between 2016 and 2020, Texas spent \$21 million jailing individuals who were accused of Class C traffic offenses, even though the punishment if convicted for those crimes does not include a single day of jail time.**<sup>43</sup> A prohibition against arrests in many of these cases, effected through local officials or statewide legislation, would decrease needless spending and focus law enforcement efforts on serious crimes.

### **Expand Use of Citations Instead of Arrest**

State and local policymakers should require use of citation in lieu of arrest for eligible offenses, with certain exceptions. In addition, the Texas Legislature should expand cite and release eligibility. These changes would make our criminal legal system more aligned with the goal of public safety, as our law enforcement and corrections resources could be focused on addressing serious crimes. Thousands of people who are booked into jail each year could instead safely be issued a citation ordering them to appear in court later and avoid pretrial detention.

## **Improve Transparency in Pretrial Processes**

Many jurisdictions in Texas are conducting magistrations behind closed doors, out of the view of advocates, law enforcement, and crime victims. State and local officials should take steps to ensure judicial accountability, open government, and compliance with existing open court principles by taking steps to affirm the public's right to access initial bail hearings. The Legislature can do this by requiring courts to share basic hearing details in advance and offer videoconference access when in-person attendance is not possible. State and local officials should also continue to improve pretrial data collection. Improved data collection should include length and reason for detention, the bond status of people in jail in each county, and demographic information.

# Conclusion

Texas' existing money-based system undermines safety while causing tens of thousands of low-income people to await trial while incarcerated. To fix these issues, we must focus public safety resources with research-tested policies and practices. We urge policymakers to consider the policies above to reduce criminal penalties, expand diversion, ensure counsel at magistration, increase nonmonetary release options, increase the use of text reminders and evidence-based ways to improve court appearance, take concrete steps to honor the presumption of innocence, and ensure our courts are open to the public and not secret and unaccountable. By making smart improvements to Texas' pretrial system, we can save taxpayer money while increasing the rationality, safety, and fairness of pretrial detention decisions.

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The primary author of this brief is Nick Hudson, senior manager of policy and advocacy at the ACLU of Texas. Special thanks for review and story collection support goes to Krish Gundu from the Texas Jail Project and Laquita Garcia from Texas Organizing Project.

## Contact Information

For more information, contact  
Nick Hudson, senior manager,  
policy and advocacy, at  
[nhudson@aclutx.org](mailto:nhudson@aclutx.org).

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# Endnotes

1 Hecht, Nathan, “The State of the Judiciary in Texas.” An Address to the 86th Texas Legislature, Austin, Texas, February 6, 2019. Texas State Law Library. <https://www.sll.texas.gov/assets/pdf/judiciary/state-of-the-judiciary-2019.pdf>

2 “Inmate Population Report.” County Jail Population. Texas Commission on Jail Standards. Accessed October 28, 2024. <https://www.tcjs.state.tx.us/population-reports/>. Between Sept. 1, 2023, and Sept. 1, 2024, county jails held on average 53,700 people in pretrial detention for misdemeanors, state jail felonies, and felonies, either under local charges or under contract. This number excludes those with bench warrants and those housed elsewhere.

3 The average cost per day for Texas jails as of August 2024 was \$62.41, according to an email sent by the Texas Commission on Jail Standards to the ACLU of Texas on Oct. 11, 2024. Available upon request.

4 These population numbers represent calculated totals from Sept. 1, 2000, and Sept. 1, 2024, obtained on the Texas Commission on Jail Standards website at these respective links <https://www.tcjs.state.tx.us/historical-population-reports/>, <https://www.tcjs.state.tx.us/population-reports/>.

5 Rubin, Madaleine. “How Texas’ Cash Bail System and under-Resourced Jails Can Wreak Havoc on Women Who Are Poor.” Texas Tribune, April 1, 2024. <https://www.texas-tribune.org/2024/04/01/texas-jails-cash-bail/>

6 In re Winship, 397 U.S. 358, 362-64 (1970) (“The [reasonable doubt] standard provides concrete substance for the presumption of innocence – that bedrock ‘axiomatic

and elementary’ principle whose ‘enforcement lies at the foundation of the administration of our criminal law.’”) and Estelle v. Williams, 425 U.S. 501, 503 (1976) (“The presumption of innocence, although not articulated in the Constitution, is a basic component of a fair trial under our system of criminal justice.”)

7 Funk, Kellen R., and Mayson, Sandra G. “Bail at the Founding.” Harvard Law Review 137, no. 7 (May 2024): 1824. <https://doi.org/10.2139/ssrn.4367646>.

8 Schnacke, Timothy R. “Fundamentals of Bail: A Resource Guide for Pretrial Practitioners and a Framework for American Pretrial Reform.” Washington, D.C.: National Institute of Corrections (NIC), 2014. <https://dev-nicic.zaidev.net/resources/nic-library/all-library-items/fundamentals-bail-resource-guide-pretrial-practitioners-and>.

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

10 Courts in Texas require almost everyone – defendants in 87% of initial appearances where bail was set for a Class B misdemeanor or higher – to make an upfront payment to secure their pretrial freedom. Data regarding the prevalence of cash or surety bonds in bail setting is derived from the Texas Office of Court Administration’s Damon Allen Act Bail Proceedings and Public Safety Report System FY 2023 Report (FY 2023) available at <https://www.tx-courts.gov/media/1457571/bail-report-2023.pdf>; in 2023, of the 27,197 Class B misdemeanor marijuana possession cases where bail was originally set, 80% required cash or surety bonds, with a median bond amount of \$1,000. Texas Office of Court Administration. “Texas Bail Proceedings and Public Safety Report System: Bail Form Details Dataset for Jan. 1, 2023-Dec. 31, 2023.” Excel. Available upon request.

11 Cohen, Thomas H., Ph.D. and Brian Reaves, Ph.D. "State Court Processing Statistics, 1990-2004: Pretrial Release of Felony Defendants in State Courts." U.S. Department of Justice, Office of Justice Programs. November 2007, NCJ 214994. Accessed Oct. 15, 2024. <https://bjs.ojp.gov/content/pub/pdf/prfdsc.pdf>.

12 "Inmate Population Report." County Jail Population. Texas Commission on Jail Standards. Accessed October 28, 2024. <https://www.tcjs.state.tx.us/population-reports/>. On September 1, 2024, county jails held 53,048 people in pretrial detention for misdemeanors, state jail felonies, and felonies, either under local charges or under contract. This number excludes those with bench warrants and those housed elsewhere.

13 Arpit Gupta, Christopher Hansman, & Ethan Frenchman, The Heavy Costs of High Bail: Evidence from Judge Randomization, 45 *Journal of Legal Studies* 471, 475 (2016). Available at: <https://www.journals.uchicago.edu/doi/abs/10.1086/688907> and Michael R. Jones, Unsecured Bonds: The As Effective and Most Efficient Pretrial Release Option, Pre-Trial Justice Institute Report (October 2013) at [https://www.ncsc.org/\\_\\_data/assets/pdf\\_file/0017/1655/unsecured-bonds-the-as-effective-and-most-efficient-pretrial-release-option.ashx.pdf](https://www.ncsc.org/__data/assets/pdf_file/0017/1655/unsecured-bonds-the-as-effective-and-most-efficient-pretrial-release-option.ashx.pdf).

14 Fishbane, A., Ouss, A., & Shah, A. K. (2020). Behavioral nudges reduce failure to appear for court. *Science* (New York, N.Y.), 370(6517), eabb6591. <https://doi.org/10.1126/science.abb6591>.

15 All judges in Texas are magistrates, but they are generally only referred to as magistrates when performing duties involved the initial stage of a criminal proceeding, generally called magistration. Texas Code of Criminal Procedure, Article 2.09.

16 The Texas Constitution establishes a right to bail except in specific situations. Bail may be denied in capital cases where the proof of the accused's guilt is evident (Texas Constitution, Article 1, Section 11). Bail may be denied by a district judge where an accused person: has been convicted of two previous felonies; is accused of a second felony while on bail for a previously indicted felony; is accused of a noncapital felony involving the use of a deadly weapon after previously having been convicted of a felony; or is accused of certain types of violent or sexual offense while under supervision (Texas Constitution, Article 1, section 11a). Bail may be denied if a person who violates a bail condition in a family violence case has their bail revoked or forfeited (Texas Constitution, Article 1, Section 11b). Bail may also be denied for individuals who violate a protective order. (Texas Constitution, Article 1, Section 11c and Texas Code of Criminal Procedure, Chapter 17, Article 17.292,)

17 Texas Code of Criminal Procedure, Chapter 17, Article 17.40.

18 Texas Office of Court Administration. Damon Allen Act Bail Proceedings and Public Safety Report System FY 2023 Report (FY 2023). <https://www.txcourts.gov/media/1457571/bail-report-2023.pdf>.

19 Lowenkamp, C.T., Van Nostrand, M., & Holsinger, A. "The Hidden Costs of Pretrial Detention." (2013), <https://nicic.gov/hidden-costs-pretrial-detention>.

20 Lowenkamp, Christopher. "The Hidden Costs of Pretrial Detention Revisited." March 21, 2022. 10.13140/RG.2.2.35317.45288.

21 Heaton, Paul; Mayson, Sandra G.; and Stevenson, Megan, "The Downstream Consequences of Misdemeanor Pretrial Detention" (2017). All Faculty Scholarship. 2411. <https://>

scholarship.law.upenn.edu/faculty\_scholarship/2411

22 Texas A&M Public Policy Research Institute. (March 2017). *Liberty and Justice: Pretrial Practices in Texas*, available at: <https://ppri.tamu.edu/portfolio-items/liberty-and-justice/>

23 Gupta, Arpit, Christopher Hansman, and Ethan Frenchman. "The Heavy Costs of High Bail: Evidence from Judge Randomization." *Journal of Legal Studies* Vol. 45, no. No. 2, Article 8. (2016). <https://chicagounbound.uchicago.edu/jls/vol45/iss2/8>.

24 Hecht, Nathan, "The State of the Judiciary in Texas." An Address to the 86th Texas Legislature, Austin, Texas, February 6, 2019. Texas State Law Library. <https://www.sll.texas.gov/assets/pdf/judiciary/state-of-the-judiciary-2019.pdf>

25 International Association of Chiefs of Police, *Law Enforcement's Leadership Role in the Pretrial Release and Detention Process* (Washington, D.C.: 2011.) <https://www.govinfo.gov/content/pkg/GOVPUB-J26-PURL-gpo22254/pdf/GOVPUB-J26-PURL-gpo22254.pdf>.

26 "Inmate Population Report." County Jail Population. Texas Commission on Jail Standards. Accessed Oct. 28, 2024. <https://www.tcjs.state.tx.us/population-reports/>. Between Sept. 1, 2023 and Sept. 1, 2024, county jails held on average 53,700 people in pretrial detention for misdemeanors, state jail felonies, and felonies, either under local charges or under contract. This number excludes those with bench warrants and those housed elsewhere.

27 Hickner, Kaitlin. Texas Commission on Jail Standards. "Re: Hudson – Cost per day." Email message to author. Oct. 11, 2024.

28 National Association of Counties. *County Jails at a Crossroads: An Examination of the Jail Population and Pretrial Release* (2015) Available at: [https://www.naco.org/sites/default/files/documents/County%20Jails%20at%20a%20Crossroads%20-%20Full%20Report\\_updated.pdf](https://www.naco.org/sites/default/files/documents/County%20Jails%20at%20a%20Crossroads%20-%20Full%20Report_updated.pdf).

29 Holsinger, A., Crime and Justice Institute, *Analyzing Bond Supervision Survey Data: The Effects of Pretrial Detention on Self Reported Outcomes*, 2016.

30 Holsinger, A., Crime and Justice Institute, *Analyzing Bond Supervision Survey Data: The Effects of Pretrial Detention on Self Reported Outcomes*, 2016.

31 Will Dobbie and Crystal S. Yang, "The Economic Costs of Pretrial Detention," *Brookings Papers on Economic Activity*, March 2021, <https://www.brookings.edu/bpea-articles/the-economic-costs-ofpretrial-detention/>.

32 Nam-Sonenstein, Brian. "Research Roundup: Evidence That a Single Day in Jail Causes Immediate and Long-Lasting Harms." *Prison Policy Initiative*, August 6, 2024. [https://www.prisonpolicy.org/blog/2024/08/06/short\\_jail\\_stays/](https://www.prisonpolicy.org/blog/2024/08/06/short_jail_stays/)

33 Will Dobbie and Crystal S. Yang, "The Economic Costs of Pretrial Detention," *Brookings Papers on Economic Activity*, March 2021, <https://www.brookings.edu/bpea-articles/the-economic-costs-ofpretrial-detention/>.

34 Sawyer, Wendy. "How Race Impacts Who Is Detained Pretrial." *Prison Policy Initiative* (blog), October 9, 2019. [https://www.prisonpolicy.org/blog/2019/10/09/pretrial\\_race/](https://www.prisonpolicy.org/blog/2019/10/09/pretrial_race/).

35 Rabuy, Bernadette, and Daniel Kopf. "Detaining the Poor: How Money Bail Perpetuates an Endless Cycle of Poverty and Jail

Time.” Prison Policy Initiative, May 2016. <https://www.prisonpolicy.org/reports/DetainingThePoor.pdf>.

36 Sawyer, Wendy. “How Race Impacts Who Is Detained Pretrial.” Prison Policy Initiative (blog), Oct. 9, 2019. [https://www.prisonpolicy.org/blog/2019/10/09/pretrial\\_race/](https://www.prisonpolicy.org/blog/2019/10/09/pretrial_race/).

37 U.S. Department of Justice, Bureau of Justice Statistics. “Census of Jails, 2005-2019 – Statistical Tables.” Washington, D.C.:The Bureau, NCJ 255406, BJS, October 2021. <https://bjs.ojp.gov/library/publications/census-jails-2005-2019-statistical-tables> and U.S. Census Bureau, “HISPANIC OR LATINO, AND NOT HISPANIC OR LATINO BY RACE,” 2020. Decennial Census, DEC 118th Congressional District Summary File, Table P9, 2020, accessed on Nov. 4, 2024, <https://data.census.gov/table/DECENNIALCD1182020.P9?g=040XX00US48>.

38 Swavola, Elizabeth, Kristine Riley, and Ram Subramanian. “Overlooked: Women and Jails in an Era of Reform.” Vera Institute of Justice, August 2016. <https://vera-institute.files.svdcdn.com/production/downloads/publications/overlooked-women-and-jails-report-updated.pdf>.

39 Swavola, Elizabeth, Kristine Riley, and Ram Subramanian. “Overlooked: Women and Jails in an Era of Reform.” Vera Institute of Justice, August 2016. <https://vera-institute.files.svdcdn.com/production/downloads/publications/overlooked-women-and-jails-report-updated.pdf>.

40 See Ernst J. Fazio et al., Early Representation by Defense Counsel Field Test: Final Evaluation Report 4 (1985) and Douglas L. Colbert et al., Do Attorneys Really Matter? The Empirical and Legal Case for the Right of Counsel at Bail, 23 *CARDOZO L. REV.* 1719,

1749 (2002) and Naufal, Georges et. al. Public Policy Research Institute, Texas A&M University. Counsel at First Appearance Evaluation (Aug. 31, 2023) available at [https://ppri.tamu.edu/wp-content/uploads/2024/04/230831\\_CA-FA-Evaluation\\_Final-Report.pdf](https://ppri.tamu.edu/wp-content/uploads/2024/04/230831_CA-FA-Evaluation_Final-Report.pdf)

41 Fishbane, A., Ouss, A., & Shah, A. K. (2020). Behavioral nudges reduce failure to appear for court. *Science* (New York, N.Y.), 370(6517), eabb6591. <https://doi.org/10.1126/science.abb6591>.

42 United States v. Salerno, 481 U.S. 739, 746–50 (1987).

43 Pressley, Nikki. Right on Crime. Non-Jailable Misdemeanors: The Unfinished Business of the Sandra Bland Act of 2017. (January 2023). Available at <https://righton-crime.com/wp-content/uploads/2023/01/2023-01-ROC-Arrests-for-Non-Jailable-Misdemeanors-NikkiPressley.pdf>.