

SUMMARY AND CONCLUSIONS

LIBERTY AND JUSTICE: PRETRIAL PRACTICES IN TEXAS

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The full report can be retrieved from
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SUMMARY AND CONCLUSIONS

Liberty and Justice: Pretrial Practices in Texas

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.

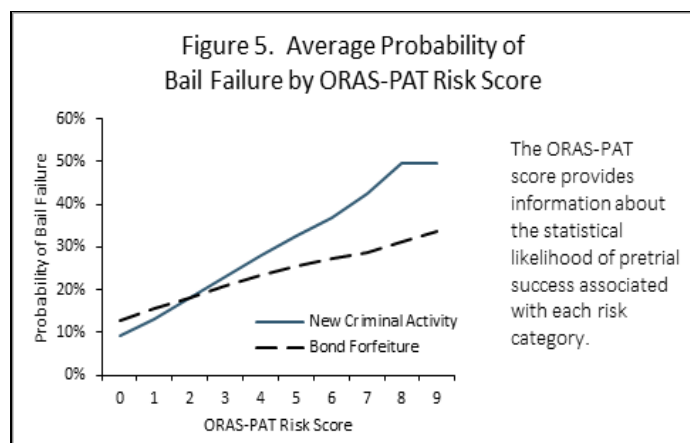
In October 2016, the Texas Judicial Council's Criminal Justice Committee reviewed the evidence and produced a report advocating expansion of risk-informed release and personal bond. To inform their decision-making and test the potential impacts of this policy guidance, the Council asked the Public Policy 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.

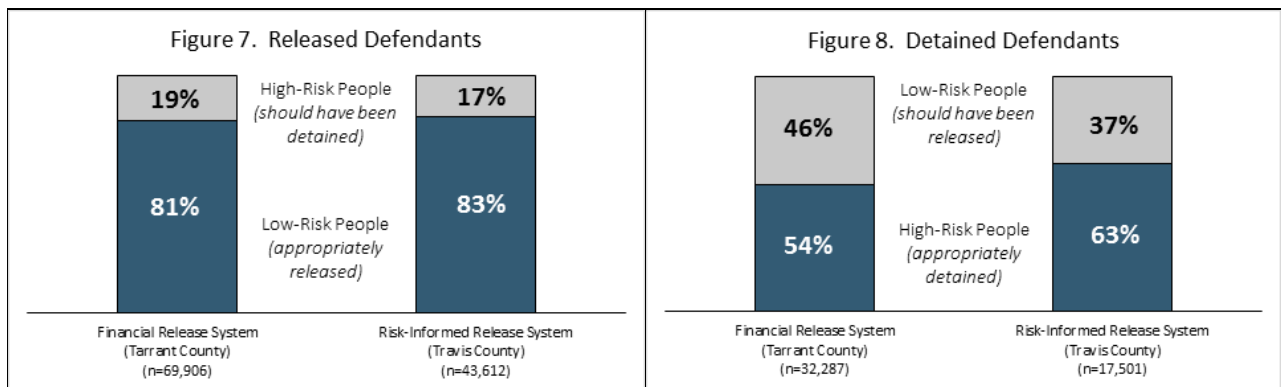
While the ORAS-PAT is an effective decision tool, it requires interviews with defendants and others, which can be resource-intensive. This study found that an automated risk determination based entirely on data elements currently available in the Travis County information system achieved similar results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

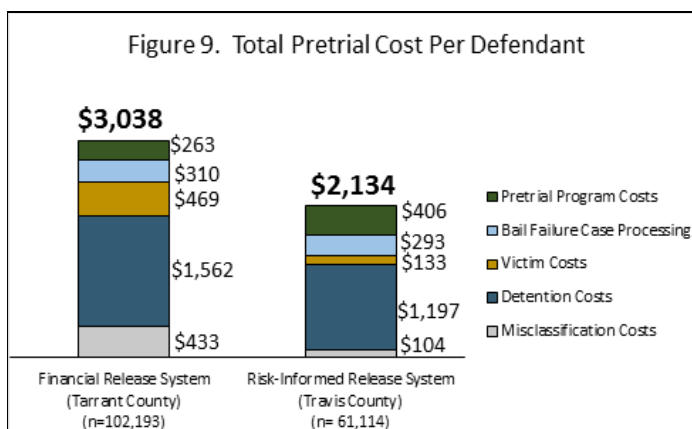
Although Finding 1 shows that risk assessment can predict which individuals will succeed on bond, it is important to ask how much a validated instrument improves the subjective decision processes already being used by courts. A statistical model was constructed to calculate each individual's chance of 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 percent of defendants, but use of a risk assessment tool improved the successful classification rate to 77 percent. 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.

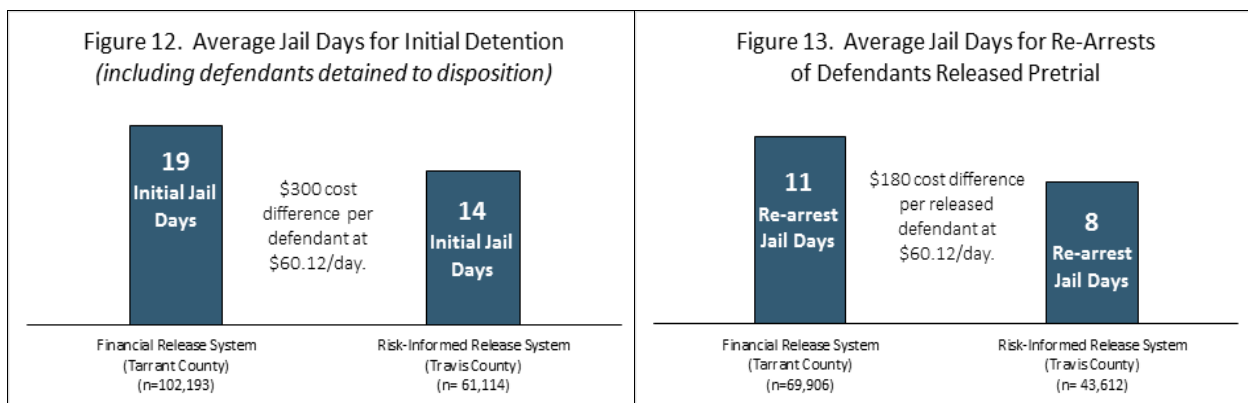
Case processing costs are 5% lower where risk assessment is used. These include re-arrest, court hearings, prosecution, and indigent defense costs attributable to bond failure. Bail forfeiture rates are lower in the financial release system, but more new crimes are committed by people on bond.

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.

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)
Victim Costs per Defendant	\$469	\$133
Victim Costs per Offense	\$9,052	\$1,900
Violent Felonies	7.5%	4.9%
Non-Violent Felonies	38.1%	26.6%
Misdemeanors	54.5%	68.4%

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.



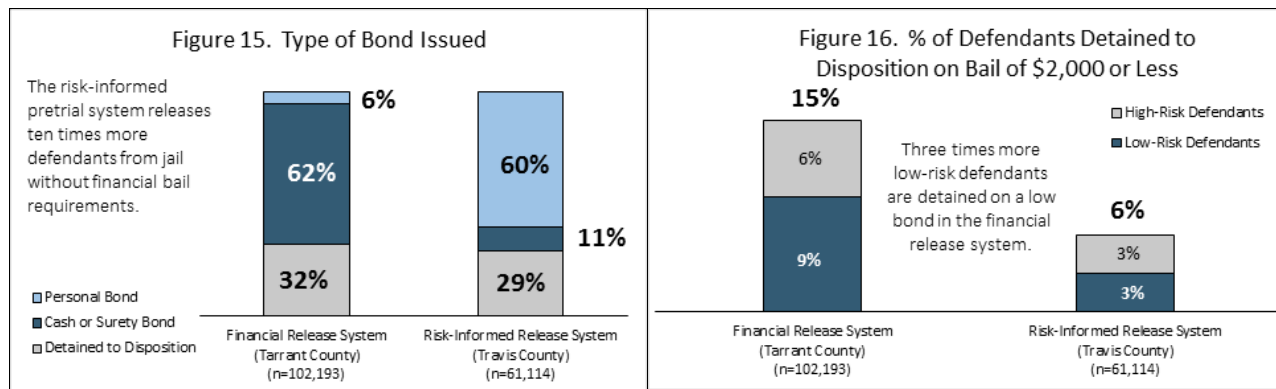
Misclassification costs are 76% lower where risk assessment is used. These are costs incurred for the release of high-risk or detention of low-risk defendants net of expected cost for proper placement of a person of the same risk. Overall, 14% of total pretrial costs are attributable to misclassification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



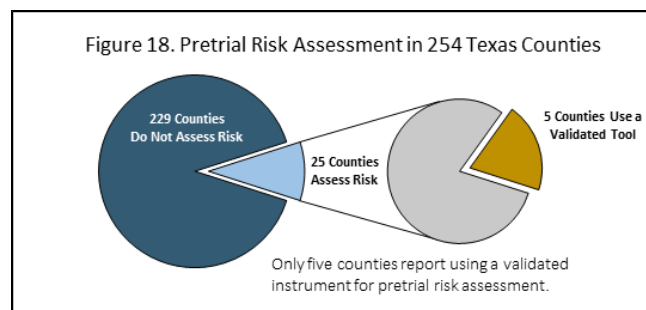
Not only are more people detained on a low bond in the financial release system, but a higher proportion of those defendants have a statistically low risk of bond failure. Stated differently, three times more people in the financial release system would likely succeed if released but remain in jail because 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 five Texas counties currently use validated pretrial risk assessment.

Although 25 counties report assessing pretrial risk, only five 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 are operated by independent departments.

Table 13. Bond Supervision Program Administration

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

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. 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.