



# HOW BAIL REFORM CAN LEAD TO IMPROVED COURT APPEARANCE RATES

**Texas should rely on risk, not money, to determine whether someone is eligible for pretrial release before they are convicted of any crime. Evidence shows this will lead to lower jail costs through the release of more non-dangerous people and will not increase failure to appear rates.**

Typically, a person accused of a crime in Texas will only be released from jail if they can afford the bond amount set in their case. This leads to the unnecessary and costly detention of people who pose no public safety risk and no risk of flight, but simply have no money for bail. Texas should implement a system in which pretrial release is instead determined by a judge's individualized assessment of a defendant's risk of committing another crime or not appearing for court.

Doing so would keep court appearance rates steady, while improving public safety and saving money through reduced jail costs. Further, by implementing small changes that have been proven to work in other places, such as text message reminders of court dates, the state could improve court appearance rates.

## **FAILURE TO APPEAR RATES HAVE REMAINED STABLE IN JURISDICTIONS THAT HAVE INCREASED RELEASE OF LOW-RISK PEOPLE ON PERSONAL BONDS**

- Kentucky transitioned in 2011 to a pretrial justice system where money bond was only required only if a judge determined a person was a significant flight risk or danger to the community. While this substantially increased the percentage of people released on personal bond, court appearance rates remained steady.<sup>1</sup>
- A 2013 study of nearly 2,000 people accused of crimes in Colorado compared those released on unsecured personal bonds versus secured bonds (i.e., either cash bonds or surety bonds posted by a bail bondsman). Results showed no statistically significant differences in court appearance rates for people released on unsecured bonds versus secured bonds: 97% of low-risk defendants on unsecured bond appeared in court while 93% of low-risk defendants on secured bond appeared in court.<sup>2</sup>
- In February 2018, Philadelphia District Attorney Larry Krasner announced a new policy granting people charged with certain nonviolent misdemeanors and felonies release on personal bond, leading to an immediate 23% increase in the number of defendants released on personal bonds. Academic researchers have now evaluated outcomes of that policy and found no change in failure to appear rates or recidivism rates among the people being released.<sup>3</sup>

## **THERE ARE EFFECTIVE STRATEGIES TO INCREASE APPEARANCE RATES WITHOUT PRETRIAL DETENTION**

- A 2011 report commissioned by the DOJ found that people rarely intentionally miss a court date. Instead, the most common reasons people do not come to court are work conflicts, transportation

difficulties, childcare conflicts, and forgetting about the court date. These common reasons for failing to appear can be addressed through cost-effective strategies that do not involve pretrial incarceration.<sup>4</sup>

- For example, just providing defendants with better information about when and where to appear as well as reminders of their court dates can dramatically improve appearance rates. A 2018 study found that failure to appear decreased by 32 percent in one jurisdiction by implementing two simple and inexpensive changes: redesigning notices about court dates and text message reminders.<sup>5</sup>

## **FAILURE TO APPEAR RATES IN HARRIS COUNTY SUFFERED DUE TO THE SYSTEM BEING IN CHAOS--NOT EXPANDED RELEASE ON PERSONAL BOND**

- A widely-cited statistic by the bail bond industry claims failure to appear rates went up in Harris County following a federal court ruling requiring the county to release more people on personal bond. But increased failure to appear rates in Harris County were due to myriad factors throwing the system into chaos--not increased use of personal bond.
- In addition to systemic chaos caused by Hurricane Harvey, the court's injunction unintentionally led to people determined to be higher risk being released with less supervision than lower-risk people.<sup>6</sup> Moreover, county judges opposed to bail reform reportedly manipulated court appearance statistics in attempt to make the new system appear to be a failure.<sup>7</sup>

**Releasing people based on risk not wealth, while implementing other evidence-based strategies, can ultimately lead to improved court appearance rates.**

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<sup>1</sup> Pretrial Services, Administrative Office of the Courts, Kentucky Court of Justice, Pretrial Reform in Kentucky (2013).

<sup>2</sup> Michael R. Jones, Pretrial Justice Institute, Unsecured Bonds: The As Effective and Most Efficient Pretrial Release Option (2013).

<sup>3</sup> Aurelie Ouss and Megan Stevenson, "Evaluating the Impacts of Eliminating Prosecutorial Requests for Cash Bail," *George Mason Legal Studies Research Paper No. LS 19-08*, February 17, 2019 available at <https://ssrn.com/abstract=3335138>.

<sup>4</sup> Brian H. Bornstein, Alan J. Tomkins, and Elizabeth M. Neeley, "Reducing Courts' Failure to Appear Rate: A Procedural Justice Approach," May 2011 available at <https://www.ncjrs.gov/pdffiles1/nij/grants/234370.pdf>.

<sup>5</sup> [http://www.abajournal.com/lawscribbler/article/text\\_messages\\_can\\_keep\\_people\\_out\\_of\\_jail](http://www.abajournal.com/lawscribbler/article/text_messages_can_keep_people_out_of_jail)

<sup>6</sup> Meagan Flynn, "Harris County bail system offers little help to defendants who most need it, cases reveal," *Houston Chronicle*, January 22, 2018 available at <https://www.houstonchronicle.com/news/houston-texas/houston/article/Harris-County-bail-system-shortchanges-defendants-12516456.php>.

<sup>7</sup> Declaration of Judge Darrell Jordan, *O'Donnell v. Harris County*, Case No. 16-CV-01414 (S.D. Tex. 2016), No. 17-20333 (5th Cir. 2017).



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