

**HARRIS COUNTY PRE-TRIAL SERVICES:
POLICIES AND PRACTICES**

HOUSTON MINISTERS AGAINST CRIME

Prepared for the Harris County Jail Reduction Committee

By:

**Janis Bane, Director
Harris County Project
Texas Criminal Justice Coalition**

and

**David A. Jones, Attorney at Law
Harris County**

2011

HARRIS COUNTY PRE-TRIAL SERVICES: POLICIES AND PRACTICES

The Houston Ministers Against Crime (HMAC) are concerned with the impact of excessive pre-trial detention on local communities already struggling during the ongoing financial crisis. Particularly in light of acute overcrowding in the Harris County Jail, HMAC urges Harris County officials to consider the adoption of policies favoring pre-trial release for individuals who are not a danger to public safety and who are not a high risk for failure to appear in court.

Introduction

Due to widespread economic woes, many of our citizens are unable to raise the money necessary to post bond on even relatively minor cases. Even while presumed innocent, they remain in custody as their jobs are lost and their financial troubles worsen. This hardship further undermines their families and communities. At the same time, our jail struggles to make room for pre-trial detainees, often with inadequate resources. Instead of releasing the impoverished on personal bonds to appear in court, the system exhausts the Sheriff's budget with overtime and housing inmates out of our county, stretching our system to the brink.

Local financial problems run deep. According to the *2011 New York Times Almanac*, Harris County lost 50,000 jobs in the first quarter of 2010 alone. There are 122,000 individuals living off unemployment in Harris County. The unemployment rate for a teenager is 35%. The average income of a 25-year-old full-time worker with a high school diploma is \$25,000.¹ Further, data collected by the Center for Public Policy Priorities (CPPP) shows that 74.6% of the adult Harris County population has an education level of a high school diploma or less and only 26.9% have a Bachelor's degree. CPPP reports that in Harris County in 2008-2009, 60% of the average daily attendance of children in public schools was approved for free or reduced-price lunch; 881,000 were living in poverty, defined as \$18,000 for a family of three; the poverty rate is 20% for African Americans and 23% for Hispanics; there are 463,000 working-age people 18-64 years of age living in poverty, and one-third of Harris County families are single-parent households. The CPPP Kids Count survey analyzed a family budget for a single parent with two children and found that monthly expenses were anywhere from \$2,900 to \$3,200 per month for rent, food, gas, and utilities.²

Harris County: Bond and Bail Inequities

These statistics suggest that many Harris County residents are unlikely to have residual income after taking care of the basic, daily necessities. Yet, the county criminal justice system often seems impervious to the financial constraints of the affected community. While HMAC recognizes that there are consequences for criminal conduct, including fiscal ramifications in the form of fines and fees, it is also aware that efficient criminal justice practices are not necessarily equitable ones.

The setting of bail is one such practice where expediency seems to dominate equity. For instance, Texas Code of Criminal Procedure 17.15 requires the court to consider the defendant's ability to make bail, as well as the nature and circumstances of the alleged offense. Harris County rarely deviates from its predetermined bail schedules that establish bond amounts according to a defendant's offense level rather than a defendant's risk level or financial capabilities. Additionally,

the schedules include incremental increases in the bail amount for each conviction in a defendant's criminal history regardless of the age of the prior offense(s).

Causes and Ramifications

The rigidity of these rules contributes to high pre-trial detention rates in Harris County and exacerbates the County's budget woes. The Harris County Sheriff's Office has been asked to cut 10% from its budget and Sheriff Adrian Garcia announced that such a measure would be impossible. A consultant's report presented to the Commissioners Court stated that the Sheriff's Office is short 256 employees in jail operations alone.³

The information that follows substantiates HMAC's concerns and suggests the need for immediate and dramatic change in the pre-trial policies and practices of the Harris County Criminal Courts.

- The problem we describe is not new. In a 2005 Justice Management Report on Harris County, the authors observe: "there may be large numbers of low-risk defendants who remain in detention because of inability to post bond. Whether these numbers are large or small, and regardless of the length of time that they remain in detention, any unnecessary detention of defendants during the pretrial stage of criminal cases is undesirable."⁴
- An October 2009, Phase I report by the Justice Management Institute observed that the Harris County Jail population is made up of mostly pre-trial detainees.⁵
- The daily jail average count for October 2010 showed 5,908 of the 10,401 county jail inmates were detained pending trial.⁶
- The U.S. Supreme Court requires that bail decisions should be individualized, yet Harris County rarely deviates from its bail schedules.
- Misdemeanor offenders, who by law may be issued a citation⁷ rather than arrested, are instead jailed and required to post bond.
- The bail schedules adopted by the courts have provisions that increase the bond amount for prior convictions without allowance for the age of those previous offenses.⁸
- In 2009, the bond amount set at the time that charges were filed was lowered due to individualized financial considerations by a magistrate less than 10% of the time.⁹
- During the first appearance before a magistrate, a lawyer is often not present to assess the individualized considerations that may contribute to a reduction in bond.
- On average, only about 55% of defendants charged with a misdemeanor and 34% of those with a felony were able to be released on any type of bond before case disposition.
- With the 34% bond release rate for felony offenders, Harris County's rate of release is low compared to the national average for other large urban counties at approximately 60%.¹⁰
- In 2009, Travis County released 18,257 defendants on personal bond¹¹ while Harris County, with a much larger population, released approximately 6,000.¹²
- In Fiscal Year 2008-9, of the 91,867 defendants interviewed, 32.8% (30,544) had no prior convictions and 35.4% (31,744) were assessed as having a low or low-moderate risk for pre-trial misconduct; yet the courts only approved 7.5% (6,847) for release on a personal bond.¹³
- In 2009, Bexar County arrested 43,544 individuals for a misdemeanor and released 9,763 on personal bonds. In the same year, Harris County arrested 63,375 on misdemeanor charges and released 5,233 on personal bonds.

Racial Bias

Evidence of racial inequities in bail/bond decisions is as follows:

- According to the U.S. Census, in 2009, Harris County's population was 39.8% Hispanic, 35.3% White, 18.8% African American, and 6.1% Other.
- While African Americans make up only 18.8% of Harris County's population, according to Harris County Pre-trial Services, they make up the highest percentage of misdemeanor arrests and they demonstrate the lowest pre-trial release rate for misdemeanor offenses.
- Release and detention rates in Harris County are not consistent amongst different racial/ethnic groups. Data from Harris County Pre-trial Services for the months of October 2010 – December 2010 indicate the following:

Race	Misdemeanor Release on Bond	Felony Release on Bond
Other	78.7%	57.7%
White	70.3%	44.4%
Hispanic	51.6%	31.4%
Black	45.4%	29.9%

- While Black defendants had the lowest release rates, they represented the largest category of arrestees in Harris County. Below is a breakdown of the defendants by charge type in October 2010:

Race	General Population	Misdemeanor Charges	Felony Charges
Other	6.1%	1.9%	1.1%
Black	18.8%	37.5%	48%
White	35.3%	29%	21.8%
Hispanic	39.8%	31.6%	29.1%

- Finally, in October 2010, the findings from the research study, *Testing for Racial Discrimination in Bail Setting*, stated: "These findings suggest the possibility of substantial bias against blacks in bail setting." The results of the study conclude that black defendants may have discriminatorily higher bails and that remaining incarcerated may also "affect the probability of conviction."¹⁴

Outcomes and Financial Implications

Defendants unable to make a bond remain incarcerated, at taxpayer expense, until the disposition of his/her case. The costs to defendants, their families, the community, and the taxpayer are significant. For the defendant, statistics show that better dispositions occur for those who are released on some sort of bond. Harris County Pre-trial Services findings demonstrate that 65.2% of those released on a bond required no further incarceration, 19.9% of those had their cases dismissed, and some form of probation was granted to 31.6%.¹⁵

Costs to the families and especially the children of the incarcerated are discussed in the Pew Charitable Trusts 2010 report, *Collateral Costs: Incarcerations Effects on Economic Mobility*. This report examines the 300% increase in the United States' incarcerated population since 1980 and the impact on communities, families, and economic mobility. The conclusion of this report cites research that has shown the detrimental effects of incarcerated parents on the life of their children. Children of incarcerated parents have increased risk factors that negatively impact their behavior, contributing to a cycle of poverty and crime.¹⁶

The cost of pre-trial strategies in Harris County is staggering. According to the Office of Budget Management, the cost for housing an inmate in the general population with no health concerns ranged from \$40-\$45 per day. This average daily rate is almost doubled when the administrative costs for booking and releasing are factored in. Housing Harris County prisoners outside of Harris County adds to the millions of dollars spent annually on incarceration. Harris County spent \$17 million in Fiscal Year 2009 to house inmates in other jails.¹⁷

Reasonable use of personal bonds for these offenders alone will save millions in the cost of additional jail space alone.

Recommendations

- Increase the number of defendants receiving personal bonds.
- Consider any State Jail Felony offender eligible for community supervision to be eligible for a personal bond.
- Allow any defendant arrested for an offense that the Texas Legislature considered eligible for a citation and summons to be released on a personal bond. The 2007 Legislature in HB 2391 determined by an overwhelming number (only 2 no votes from the House and Senate combined) that certain offenders do not need to be booked. Yet in Harris County these offenders are still required to be jailed and make bond to be released.
- Revise the bond schedule to consider economic conditions and unemployment rates in Harris County.
- Follow Recommendation #11 from the Justice Management Institute suggesting newly arrested persons have representation at the initial appearance setting when bond is determined¹⁸
- Review the bail/bond process beginning at the magistrate level. Allow magistrates to use discretion when determining bond amounts. Magistrates need to have authority and autonomy from the Courts to set bond amounts and make decisions on personal bonds.
- Require the judiciary to use best practices and release defendants determined as low or low-to-moderate risk based on the validated risk assessment instrument. Harris County Pre-trial Services uses a risk assessment instrument that has been validated and is a best practice for determining who will not present a risk to the community or a risk of failure to appear in court.¹⁹ This assessment is reportedly ignored at the setting of bond.

- Follow the Justice Management Institute Report Recommendation #3, suggesting the Pre-trial Services' risk assessment tools be used "to determine level and types of monitoring/supervision likely to be needed to protect public safety and assure defendant's return to court if released."²⁰
- Only impose bond conditions that are based on evidence-based practices.
- Follow the recommendation made by the Texas Criminal Justice Coalition that "Judges who override a Pre-trial Services recommendation for release should be required to track each override and report that data to the county, along with an explanation of why jail time was warranted."²¹
- Institutionalize the use of the Affidavit of indigence recommended by the Texas Task Force on Indigent Defense.²² Although the Harris County plan for indigent defense refers to this form, it is not uniformly utilized.

¹ *New York Times Almanac*, 2011.

² The State of Texas Children 2009-2010: Harris County Snapshot.
http://www.cpp.org/factbook09/county_profile.php?fibse=48201.

³ Chris Moran, "Layoffs Begin in Harris County Government," *Houston Chronicle*, January 21, 2011.

⁴ Justice Management Institute, *Pretrial release and detention in Harris County: Assessment and Recommendations*, June 2005.

⁵ Justice Management Institute, *Harris County Criminal Justice System Improvement Project, Phase 1 Report*, October 2009.

⁶ "Harris County Comparison of Daily Average Jail Population," Office of Criminal Justice Coordination, November 9, 2010.

⁷ Texas Code of Criminal Procedures, Article 14.06.

⁸ www.justex.net/BailBondSchedule.aspx. www.ccl.hctx.net/attorneys/BAilSchedule.pdf.

⁹ Harris County Pre-trial Services Annual Report, 2009.

¹⁰ BJS, *Felony Defendants in Large Urban Counties*, 2006.

¹¹ Interim Report to the 82nd Texas Legislature House County Affairs Committee 2011.

¹² Harris County Pre-trial Services Annual Report, 2009.

¹³ <http://www.co.harris.tx.us/Pretrial/statistics>.

¹⁴ *Ibid*, page 37.

¹⁵ Harris County Pre-Trial Services Annual Report, 2009.

¹⁶ The Pew Charitable Trusts, *Collateral Costs: Incarceration's Effect on Economic Mobility*, 2010.

¹⁷ Chris Moran, "Harris County Looks for Cheaper Jail Cells," *Houston Chronicle*, June 9, 2010.

¹⁸ Justice Management Institute, *Harris County Criminal Justice System Improvement Project, Phase 1 Report*, October 2009.

¹⁹ Jail Population Management, *Elected County Officials' Guide to Pre-trial Services*: National Association of Counties, Bureau of Justice Assistance and the Pre-trial Justice Institute, 2009.

²⁰ Justice Management Institute, *Harris County Criminal Justice System Improvement Project, Phase 1 Report*, October, 2009.

²¹ Texas Criminal Justice Coalition. "Costly Confinements & Sensible Solutions: Jail Overcrowding in Texas," 2010.

²² http://www.courts.state.tx.us/tfid/TFID_policies_standards.asp.