



Support S.B. 1338: Smarter, Safer Decisions about Pretrial Detention

Now it is time for us to take up reform of the bail system and criminal pretrial release. . . . High-risk defendants, a threat to society, are freed; low-risk defendants sit in jail, a burden on taxpayers. This makes no sense.

*– Chief Justice Nathan L. Hecht, Texas Supreme Court,
State of the Judiciary Address, Feb. 1, 2017*

S.B. 1338 (Whitmire) would dramatically improve pretrial justice in Texas, requiring decisions about pretrial detention and release to be made based upon defendants' risk to public safety and their risk of failing to appear in court, as opposed to their ability to afford a money bond. The bill embodies the recommendations of the Texas Judicial Council, chaired by Chief Justice Nathan Hecht, Texas Supreme Court, and vice-chair Presiding Judge Sharon Keller, Texas Court of Criminal Appeals.ⁱ

Texas' current pretrial detention system hurts public safety and wastes money on unnecessary jail stays.

- Currently, whether an individual is jailed pretrial in Texas depends primarily on the amount of money the individual has, rather than their risk level. This leads to counties jailing thousands of people who are low-risk but unable to afford bond, wasting an estimated \$250 million taxpayer dollars on unnecessary jail stays.ⁱⁱ
- A recent study by Texas A&M's Public Policy Research Institute showed that pretrial costs are 30% lower in counties when a risk assessment tool is used to guide pretrial release decisions.ⁱⁱⁱ Yet, only 5 of 254 counties use a validated risk assessment tool.^{iv}
- Release on personal (non-financial) bond is underused across the state, and rarely used at all in some counties. For example, Tarrant County and Harris County released only about 6% of defendants on personal bond in 2015.^v Compare that to Kentucky, which has implemented statewide risk-based pretrial release and safely releases 66% of people pretrial on personal (non-financial) bond.^{vi}
- Under current law, only those accused of capital crimes and a few other offenses can be detained without bail, meaning anyone not accused of those few crimes—no matter how dangerous—can buy their release with enough money.^{vii}

S.B. 1338 would implement commonsense improvements to keep dangerous people in jail awaiting trial and safely release low-risk individuals to return to their jobs and families, by doing the following:

- **Providing judges with more information** about each defendant by implementing a validated risk assessment tool in each county, producing a reliable score of how likely an individual is to commit a crime or to fail to appear at his court date if released.
- **Encouraging the release of low-risk individuals** before trial on personal (non-financial) bond, while continuing to allow monetary bond when judges believe it is necessary.
- **Granting judges the authority to impose any conditions of release** that they believe are necessary, such as drug and alcohol testing or treatment.
- **Providing judges with additional discretion to detain** defendants pretrial (known as "preventive detention") who are a risk to community safety or of not appearing for court.

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ⁱ Texas Judicial Council, Criminal Justice Committee Recommendations (Oct. 2016), *available at* <http://www.txcourts.gov/media/1436204/criminal-justice-committee-pretrial-recommendations-final.pdf>

ⁱⁱ The Office of Court Administration estimates that at least \$250 million is wasted jailing low-risk individuals who could safely be released. Approximately \$190 million local dollars could be saved by moving to a risk-based pretrial release system, which accounts for the money that is needed for implementation. *See* Ryan Autullo, *Texas Judicial Council says bail reform could save \$190 million per year,* Austin American-Statesman (Nov. 11, 2016), *available at* <http://www.mystatesman.com/news/texas-judicial-council-says-bail-reform-could-save-190-million-year/mBuiZS4lwp1Ql2TXsypW1N/>.

ⁱⁱⁱ Dottie Carmichael et al., *Liberty and Justice: Pretrial Practices in Texas*, Texas A&M University Public Policy Research Institute (Mar. 2017), *available at* http://www.txcourts.gov/media/1437499/170308_bond-study-report.pdf.

^{iv} *Id.* at 37-38. The five counties that use validated risk assessment tools already are Bexar County, Ector County, El Paso County, Midland County, and Travis County.

^v *Id.* at 12 (Tarrant County data); Harris County Pretrial Services, 2015 Annual Report at 9, *available at* <https://pretrial.harriscountytexas.gov/Library/2015%20Annual%20Report.pdf>.

^{vi} *Pretrial Reform in Kentucky*, Pretrial Services, Administrative Office of the Courts, Kentucky Court of Justice (Jan. 2013), *available at* www.pretrial.org/download/infostop/Pretrial%20Reform%20in%20Kentucky%20Implementation%20Guide%202013.pdf.

^{vii} Texas Constitution §§ 11 – 11c; Texas Code of Crim. Pro. Art. 17.152 & 17.153.