

# Legislative Recommendations on Pretrial Release

*In June 2015, the Texas Judicial Council established a Criminal Justice Committee to assess the impact of pretrial criminal justice statutes and policies in Texas. The committee was tasked with determining if there were ways in which Texas courts could enhance public safety and social outcomes when making pretrial confinement decisions.*

## Background

While they are presumed innocent, many criminal defendants in Texas are detained in jail before and during trial because they cannot post bail. In the past 25 years, the pretrial population in Texas jails has risen from just over 32 percent of the population, to almost 75 percent of the population, excluding federal contract inmates and state parole violator inmates. Research shows that innovations to bail practices would increase public safety, decrease costs and minimize the adverse impacts of an extended pretrial detention for those who are a low risk to society.

## Legislative Recommendations

1. Require defendants arrested for jailable misdemeanors and felonies to be assessed using a validated pretrial risk assessment prior to an appearance before a magistrate.
2. Provide for a presumption of pretrial release through personal bond, leaving discretion with judges to utilize all existing forms of bail.
3. Amend the Texas Constitution and enact related statutes to provide that defendants posing a high flight risk and/or high risk to community safety may be held in jail without bail pending trial after certain findings are made by a magistrate and a detention hearing is held.
4. Provide funding to ensure that pretrial supervision is available to defendants released on a pretrial release bond so that those defendants are adequately supervised.
5. Provide funding to ensure that magistrates making pretrial release decisions are adequately trained on evidence-based pretrial decision-making and appropriate supervision levels.
6. Require that data on pretrial release decisions is collected and maintained for further review.
7. Authorize the Court of Criminal Appeals to adopt any necessary rules to implement the provisions enacted by the Legislature pursuant to these recommendations.
8. Provide for a sufficient transition period to implement the provisions of these recommendations.

Office of Court Administration  
Texas Judicial Council

## Pretrial Statistics

- Nearly 20% of felony cases **take more than a year to dispose** and more than 50% percent of misdemeanors remain **pending over six months** – meaning individuals held in jail while awaiting trial stay for considerable amounts of time.
- A 2016 study from Philadelphia found that pretrial detention leads to a **13% increase** in the likelihood of being convicted due to the increase in the number of guilty pleas.
- Only **5 Texas counties** report using a validated instrument that can reliably predict a defendant's risk of flight or threat to public safety.
- A recent study showed that **defendants who spent three or more days in jail** were more likely to lose employment, report serious financial difficulty, experience issues with residential stability and less likely to be able to support dependent children.

## Pretrial Costs

According to the Texas Commission on Jail Standards, the average cost per day to house an inmate in a county jail is **\$60.12**.

As of June 1, 2016 there were 41,243 individuals being held in Texas Jails, at a cost per day to local governments of **\$2,478,529**.

The estimated annual cost to local governments to house pretrial inmates is **\$905,028,085**.



The Texas Judicial Council was created in 1929 by the 41st Legislature and is the policy-making body for the state judiciary. It examines the work accomplished by the courts and submits recommendations for improvement of the system to the Legislature, the Governor and the Supreme Court.